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SHAKESPEARE'S LEGAL ACQUIREMENTS.

"SEVERAL hints which may be serviceable unto you and not ungrateful unto others I present you in this paper; they are not trite or vulgar, and very few of them any where to be met with. I set them not down in order, but as memory, fancy, or occasional observation produced them; whereof you may take the pains to single out such as shall conduce unto your purpose." SIR THOMAS BROWNE.

WE have selected a number of passages from Shakespeare in support of the theory that either before he left Stratford or on his coming to London, he had been employed in an attorney's office. When Malone, with whom the conjecture originated in 1790, published his theory, he cited in support of it twenty-four passages. In 1859 Lord Campbell published his book, "Shakespeare's Legal Acquirements Considered," and cited one hundred and sixty passages, a large number of which are impertinent, immaterial, and may well be rejected as surplusage. Malone's twenty-four citations are nearly as of much value in the consideration of the question as Lord Campbell's one hundred and sixty. This question can only be decided by the internal evidence afforded by the Poet's writings. His familiarity with technical terms and phrases remote from the language of unprofessional life certainly indicate a professional acquaintance with the law.[1] Lord Campbell is correct in saying, "He is uniformly right in his law and in his use of legal phraseology, which no mere quickness of intuition can account for."[2]

In *The Merry Wives of Windsor*, Act II. Sc. 2, where Ford, disguised, tries to induce Falstaff to assist him in his intrigue

1 We attach but little importance to his use of certain law-terms, as "fee-simple," "fine and recovery," "indentures," "seals," etc. etc.—words which are of constant recurrence in Elizabethan literature.

2 Lives of the Chief Justices, Vol. I. p. 43, note, 2nd ed.

with Mrs. Ford, and states that for all the money and trouble he had bestowed upon her he had received no satisfaction nor promise of any at her hands, there is this question and answer :—

Fal. Of what quality was your love, then?
Ford. Like a fair house, built upon another man's ground; *so that I have lost my edifice by mistaking the place where I erected it.*

In 1852 by a decision of the Supreme Judicial Court of Massachusetts, the town of Sudbury lost a school-house "by mistaking the place where they erected it."[1] Although the principle is one of great antiquity, yet it is so far technical, that it it is not familiar to unprofessional persons.

In *Riddle* v. *Welden*[2] it was decided that the goods of a boarder are not liable to be distrained for rent due by the keeper of the boarding-house. Chief Justice Gibson in delivering the opinion of the court said that Falstaff "speaks with legal precision when he demands,—'Shall I not take mine ease in mine inn.'"[3]

When Mr. Justice Shallow, grieved by the "disparagements of Falstaff," threatened to "make a Star Chamber matter of it," vowing that "if he were twenty Sir John Falstaffs, he should not abuse Robert Shallow, Esquire,"—who writes himself "Armigero,"—he seems to have apprehended, with judicial exactness, the extraordinary jurisdiction of this tribunal; slanderous words against a King's Justice being one of the offences specially punished by the Star Chamber, in exercise of a peculiar as distinguished from an ordinary jurisdiction. And the charity of Sir Hugh, the parson, was much better than his law when he supposed that the council desired "to hear the fear of Gott, and not to hear a riot; unlawful assemblies, routs, *riots*, forgeries, perjuries, cozoanges, and libellings, being declaredin the reports known as "Star Chamber Cases," to be the matters which properly belong to the jurisdiction of the Star Chamber.[4]

An exception to the rule rejecting hearsay evidence is allowed in the case of *dying declarations*. Shakespeare, in *King John*, has put the principle[5] on which this species of evidence is

[1] First Parish in Sudbury *v.* Jones, 8 Cush. 184.
[2] 5 Wharton, 15 (1839).
[3] *First Part of King Henry IV.* Act III. Sc. 3.
[4] For this passage we are indebted to Mr. Wallace. See the Reporters, 3rd ed. 198.
[5] The general principle is stated by Lord Chief Baron Eyre in Rex *v.* Woodcock, 1 Leach, 4th ed. 502 (1789).

admitted, into the mouth of the wounded Melun, who, finding himself disbelieved while announcing the intended treachery of the Dauphin Lewis, exclaims :—

> Have I not hideous death within my view,
> Retaining but a quantity of life,
> Which bleeds away, even as a form of wax
> Resolveth from his figure 'gainst the fire?
> What in the world should make me now deceive,
> Since I must lose the use of all deceit?
> Why should I then be false; since it is true
> That I must die here, and live hence by truth?
>
> [*Act 5, scene* 4.

Evidence of this description is admissible only in the single instance of homicide, "where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration."[1] One reason for thus restricting the admission of this species of evidence may be the experienced fact, that implicit reliance cannot in all cases be placed on the declarations of a dying person; for his body may have survived the powers of his mind. Thus, in *King John*, Prince Henry is made to say :—

> Death's siege is now
> Against the mind, the which he pricks and wounds
> With many legions of strange fantasies,
> Which, in their throng and press to that last hold,
> Confound themselves.
>
> [*Act 5, scene* 7.

Though evidence addressed to the senses, if judiciously employed, is obviously entitled to the greatest weight, care must be taken not to push it beyond its legitimate extent. The minds of jurymen, especially in the remote provinces, are grievously open to prejudices; and the production of a bloody knife, a bludgeon, or a burnt piece of rag, may sometimes, by exciting the passions, or enlisting the sympathies of the jury, lead them to overlook the necessity of proving in what manner these articles are connected with the criminal or the crime; and they consequently run no slight risk of arriving at conclusions, which, for want of some link in the evidence, are by no means warranted by the facts proved. The abuse of this kind of evidence has been a fruitful theme for the satirist, and many amusing illustrations of its effect might be cited from the best authors. Shakespeare makes Jack Cade's nobility rest on this foundation;

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[1] Rex *v.* Mead, 2 B. & C. 608, and 4 D. & R. 120. Regina *v.* Hind, Bell, C. C. 253 (1860).

for Jack Cade having asserted that the eldest son of Edmund Mortimer, Earl of March, "was by a beggar-woman stolen away," "became a bricklayer, when he came to age," and was his father, one of the rioters confirms the story, by saying, "Sir, he made a chimney in my father's house, and the *bricks* are alive at this day to testify it: therefore deny it not."[1]

In the reign of Elizabeth actions for slanderous words were of frequent occurrence, and many refined distinctions were resorted to by the judges. To call a man a cuckold was not an ecclesiastical slander; but wittol was; for it imports his knowledge of and consent to his wife's adultery.[2] Shakespeare noticed this distinction. In *The Merry Wives of Windsor*, Act II. Sc. 2, Ford exclaims,—

> Terms! names!—Amaimon sounds well; Lucifer, well; Barbason, well; yet they are devil's additions, the names of fiends: but cuckold! *wittol-cuckold!*[3] the Devil himself hath not such a name.

"Conviction and attainder," says Blackstone, "are frequently, through inaccuracy, confounded together."[4] In *Henry VI.* Part I. Act II. Scene 4, Richard Plantagenet is reminded of the Earl of Cambridge, his father's "attainder in the late King's days," and replies,—

> "My father was *attached*, not attainted;"

though, as might be expected in those early times, condemnation, if not legal attainder, followed in the next line—

> "Condemn'd to die for treason, but no traitor."

Since which, attainder of *felony*, except in high (or petty) treason or murder, disinherits no heir, and prejudices no title, except the offender's for his life.[5]

In *The Winter's Tale*, Act I. Sc. 2, there is an allusion to that abuse in English law procedure which first lighted the flame of philanthropy in the bosom of Howard,—the dragging back acquitted prisoners to their cells, in order to satisfy the fees of gaolers. Hermione, trying to persuade Polixines, King of Bohemia, to prolong his stay at the court of Leontes in Sicily, says to him:—

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[1] *King Henry VI.* Part II. Act IV. Scene 2.

[2] Holt C. J. in Smith *v.* Wood, 2 Salk. 692.

[3] Walker (*Critical Examination*, &c. vol. iii. p. 14) would point "*cuckold! w't'ol! cuckold!*"

[4] 4 Comm. 381.

[5] See R. *v.* Bridger, T. & Gr. 437, and 1 M. & W. 145; St. 54 G. III. c. 145.

> Force me to keep you *as a prisoner,*
> Not like a guest; *so you shall pay your fees,*
> *When you depart,* and save your thanks.

Again, in *The Third Part of Henry VI.* Act IV. Sc. 6:—

> Now that God and friends
> Have turn'd my captive state to liberty,
> At our enlargement what are thy due *fees?*

When the Seven Bishops were brought before the Court of King's Bench by a writ of habeas corpus, on leaving the Tower they refused to pay the fees required by Sir Edward Hales as lieutenant, whom they charged with discourtesy. He so far forgot himself as to say that the fees were a compensation for the irons with which he might have loaded them, and the bare walls and floor to which he might have confined their accommodation.

The second scene in the fourth act of *The Comedy of Errors* shows that Shakespeare was very familiar with some of the most refined of the principles of the science of special pleading, a science which contains the quintessence of the law. Dromio very correctly answers that his master was arrested in an *action on the case* for the price of a gold chain.[1] "The line drawn by the law between actions on the case and actions of trespass," said Lord Chief Justice De Grey, in the leading case of *Scott* v. *Shepherd*,[2] "is very nice and delicate." And although statutes have been passed both in England and some of the United States abolishing special demurrers[3] and allowing the joinder of different forms of action, the distinction, often subtle and refined, sometimes invisible, between trespass and case serves in many instances as a test of substantial liability; for example, the recent case of *Sharrod* v. *London and South-Western Railway Co.*[4] which for want of being properly understood, has met with some animadversion, in which a railway company was sued in an action of trespass for an injury to cattle which had strayed

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[1] It may be remarked that *assumpsit* derived its origin from the provisions of the statute of Westminister, and is in the old books invariably classed among the actions on the case, yet in practice *assumpsit* has long been regarded as a distinct form of action, and in modern statutes and elsewhere is frequently mentioned, even in contra-distinction to actions on the case, as belonging to the class of actions *ex contractu.*

[2] 2 W. Bl. 292; 1 Smith's Leading Cases, 5th London ed. 405.

[3] Lord Hobart remarked that special demurrers "exist that the law may be an art."

[4] 4 Exch. 580.

upon the railway, by a train passing along the line, and held not to be liable in that form of action. A moment's reflection will suggest that if the company could be so sued, all questions of duty to fence, careful driving, etc., upon which the liability of the company ought to depend, would be excluded by the nature of the inquiry called for by the plaintiff; and the case involves the substantive decision that a railway company is not liable for injury to cattle straying upon the line, unless it is alleged and proved that such injury was occasioned by its own or its servant's wrongful or negligent act. In *Brandt* v. *Craddock*,[1] the declaration was for arresting and imprisoning the plaintiff without reasonable or probable cause, on a false and malicious charge of felony. The judge at the trial treated this as a count in case for a malicious prosecution, and nonsuited the plaintiff, because there was reasonable and probable cause for the arrest and imprisonment, but the nonsuit was afterwards set aside by the court, on the ground that the cause of action was a trespass.[2] And similar considerations may be important in determining whether a cause of action, the damage resulting from which is not apparent at the time, is barred by the Statute of Limitations.[3]

In the Court of Justice in *The Winter's Tale*, Act III. Sc. 2, the indictment against Queen Hermione for high treason is framed with quite as much technical precision as is now required in England since the passage of Lord Campbell's Act, 14 & 15 Vict. c. 100.

"Hermione, Queen to the worthy Leontes, King of Sicilia, thou art here accused and arraigned of high treason, in committing adultery with Polixines, King of Bohemia, and conspiring with Camillo to take away the life of our Sovereign lord the King, thy royal husband: the pretence whereof being by circumstances partly laid open, thou, Hermione, contrary to the faith and allegiance of a true subject, didst counsel and aid them, for their better safety to fly away by night."

In *King Henry VIII.* Act II. Sc. 1, there is an account of the trial of the Duke of Buckingham related in professional language.

> The great Duke
> Came to the bar; where to his accusations
> He pleaded still, not guilty, and alleged
> Many sharp reasons to defeat the law.

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[1] 27 L. J. Exch. 314.
[2] 1 Smith's Leading Cases, 5th London ed. 407.
[3] See Bonomi *v.* Backhouse, in the House of Lords, 28th June, 1861.

> The King's attorney, on the contrary,
> Urg'd on the examinations, proofs, confessions
> Of divers witnesses, which the Duke desir'd
> To have brought, *viva voce, to his face.*

During the trial of the Duke of Norfolk for high treason, in the year 1571, he repeatedly requested that the witnesses for the Crown should be brought "face to face." And on hearing the confession of the Bishop of Ross read against him, says, "It is of good ground that I have prayed to have the Bishop of Ross brought to me in private examination *face to face*, whereby I might have put him in remembrance of truth; but I have not had him face to face, nor have been suffered to bring forth witnesses, proofs, and arguments as might have made for my purgation."

In *The Comedy of Errors*, Act IV. Sc. 2, a sheriff's officer, or bum-bailiff, who arrests a debtor on mesne process and commits him to prison, is described as

> One that, before the judgment, carries poor souls to Hell,

"Hell" being a cant word for the worst dungeon in the wretched prisons of the time. Dr. Johnson in his Dictionary defines a bum-bailiff as "A bailiff of the meanest kind; one that is employed in arrests." "It is painful to relate," says Lord Macaulay, "that, twice in the course of the year which followed the publication of this great work, he was arrested and carried to spunging houses, and that he was twice indebted for his liberty to his excellent friend Richardson."

The invitation of Pointz in *The First Part of King Henry VI.* Act. I. Sc. 2, to "my lads," to an excursion to Gadshill, which was notorious for the robberies committed there, recalls to mind a singular case in Leonard[1] who reported decisions contemporaneous with Shakespeare, where a Hundred, against whom an action had been brought for a robbery, prescribed to be discharged, and pleaded "that time out of mind felons had used to rob on Gad's Hill."

The ancient legal phrase "taken with the manner" occurs frequently in Shakespeare. In "Termes de la Ley," which Lord Kenyon C. J. termed "a very excellent book,"[2] it is thus defined: "Maynour is when a theefe hath stollen and is followed with hue and crie, and taken having that found about him which

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[1] 2 Leonard, 12.
[2] Doe *v.* Meakin, 1 East, 459 (1801).

he stole, that is called ye mainour. And so we commonly use to saye, when wee finde one doing of an unlawfull acte, that we take him with the maynour, or manner." In "Pleas of the Crown before Spigurnel, &c." published in Appendix I. to Year Books 30 and 31, Edward I.[1] we find the following cases decided in 1302 :—

"If a thief be taken with the 'mainour,' with oxen or other chattels, and the owner of the chattels pursue the thief, and the thief abandon the oxen or the chattels, and the bailiff of the liberty take them, and assign a day to the owner, and receive his proof of ownership of the chattels, and deliver to him the chattels (as it happened to the sheriff of Cornwall regarding two oxen which were delivered in that manner) he shall be charged with them, and shall answer to the King."

"A woman had committed burglary, and was taken with the 'mainour' and brought before the justices with the 'mainour.' John de C. came and sued against the woman.—SPIGURNEL took the Inquest whether he sued from the beginning, so that the woman was attached at his suit; and it was found that he had continually sued.—It was adjudged that he should recover the chattels, but if he had not sued from the commencement, notwithstanding his now suing, the King would have had the chattels."

In *King Henry IV.* Part I. Act II. Sc. 4, Prince Henry exclaims,—

> O villain! thou stolest a cup of sack eighteen years ago, and wert *taken with the manner.*

In the fourth act, third scene of *The Winter's Tale*, the phrase is used by the Clown in his conversation with Autolycus.

> *Clo.* We are but plain fellows, sir.
> *Aut.* A lie; you are rough and hairy! Let me have no lying: it becomes none but tradesmen, and they often give us soldiers the lie; but we pay them for it with stamped coin, not stabbing steel; therefore they do not give us the lie.
> *Clo.* Your worship had like to given us one, if you had not *taken yourself with the manner.*

Again in *Love's Labour's Lost*, Act I. Scene I. the Clown says,—

> The matter is to me, sir, as concerning Jaquenetta. The manner of it is, *I was taken with the manner.*

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[1] Year Books of the Reign of King Edward the First. Edited and Translated by Alfred J. Horwood. London: Longmans. 1863.

In the famous trial in *The Merchant of Venice*, Act IV. Scene 1. Bassanio, counsel for the defendant, beseeches the fair Judge not to maintain a rigid rule of Law, inaccessible to the dictates and appeal of Equity.

Bassanio. I beseech you,
Wrest once the law to your authority:
To do a great right, do a little wrong,
And curb this cruel devil of his will.

Portia. It must not be. There is no power in Venice
Can alter a decree established:
'Twill be recorded as a precedent:
And many an error, by the same example,
Will rush into the State. It cannot be.

In *The Merchant of Venice*, Act IV. Sc. 1, Antonio uses the following very technical language:—

To quit the fine for one half of his goods,
I am content, *so he will let me have*
The other half in use,

That is, in trust for Shylock during his life, for the purpose of securing it at his death to Lorenzo. Some critics explain *in use*, upon interest—a sense which the phrase certainly sometimes bore; but that interpretation is altogether inconsistent, in the present passage, with the generosity of Antonio's character. In conveyances of land, where it is intended to give the estate to any person after the death of another, it is necessary that a third person should be possessed of the estate, and the *use* be declared to the one after the death of the other, or the estate to the future possessor would be rendered insecure. This is called a conveyance to *uses*, and the party is said to be possessed, or rather *seized* to the *use* of such an one, or to the use that he render or convey the land to such an one, which is expressed in law French by the terms *seisie al use*, and in Latin, *seisitus in usum alicujus*, viz. A. B. or C. D. This latter phrase Shakespeare has rendered with all the strictness of a technical conveyancer, and has made Antonio's desire to have one half of Shylock's goods in *use*,—to render it upon his, Shylock's death, to Lorenzo.[1]

In *Much Ado About Nothing*, Act III. Sc. 1, Hero says of Beatrice,

If I were to speak,
She would mock me into air: O! she would laugh me
Out of myself, *press me to death* with wit.

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[1] Anon., quoted by Staunton, Vol. 1, p. 622.

The punishment of the *peine forte et dure* for standing mute continued until a late time. Nothing now remains but the name of the *press-yard* at Newgate. In Appendix I. to Year Books 30 and 31 Edw. I. is this case:—

"John de Dorley was arraigned for divers felonies, and he stood mute, and would not speak a word. The Justice enquired if he was dumb, or if he could speak if he chose. The Inquest said he could speak if he chose. And because he would not put himself on the country, or answer, he was adjudged to suffer penance, namely, that he should be put in a house on the ground in his shirt, laden with as much iron as he could bear, and that he should have nothing to drink on the day when he had anything to eat, and that he should drink water which came neither from fountain nor river. The same penance was adjudged to Sir Ralph Bloyho, because he would not put himself on the country."

Length and verbosity have been from time immemorial charged upon the conveyancer. One of our legal antiquaries, Somner,[1] in a kind of funereal eulogium on the Saxon simplicity, observed, that even in his time, "*an acre of land could not pass, without almost an acre of parchment.*" So, in Donne's Second Satire—

> In parchment, then, *large as the fields* he draws
> Assurances.

Shakespeare makes Hamlet remark, "The very conveyances of his lands will hardly lie in this box, [a coffin] and must the inheritor himself have no more?" And again—

> ***Hamlet.*** Is not parchment made of sheep-skins?
> ***Horatio.*** Ay, my Lord, and of calf-skins too.
> ***Hamlet.*** They are sheep, and calves, which seek out assurance in that.

Shakespeare says that justices of the peace attested the most absurd stories with their signatures. Thus, in *The Winter's Tale*, Act IV. Sc. 3—

> ***Aut.*** Here's another ballad, of a fish, that appeared upon the coast, on Wedn'sday the fourscore of April, forty thousand fadom above water, and sung this ballad against the hard hearts of maids: it was thought that she was a woman, and was turn'd into a cold fish, for she would not exchange flesh with one that lov'd her. The ballad is very pitiful, and as true.
> ***Dor.*** Is it true, too, think you?
> ***Aut.*** *Five justices' hands at it;* and witnesses, more than my pack will hold.

[1] Warren's Law Studies (ed. 1863) Vol. ii. p. 1177, note.

Lord COKE, in his Fourth Institute, commenting on the jurisdiction and power of justices of the peace, says, "It is such a form of subordinate government for the tranquillity and quiet of the realm as no part of the Christian world hath the like, if the same be duly executed." Shakespeare's picture of a justice of the peace in the opening scene of *The Merry Wives of Windsor*, certainly differs from the office so unduly commended, in language so extravagantly flattering, by the Lord Chief Justice. It has been well said that Shakespeare's picture "is so truthful as to be hardly exaggerated or caricatured. The original of that picture is confined to no age."

In *Love's Labour's Lost*, Act II. Sc. 1, is this passage which has occasioned some difficulty: —

Boyet. So you grant pasture for me.
[*Offering to kiss her.*
Maria. Not so, gentle beast.
My lips are no *common*, though *several* they be.
Boyet. Belonging to whom?
Maria. To my fortunes and me.

Mr. Grant White gives this explanation: — "Maria's meaning and her first pun are plain enough: the second has been hitherto explained by the statement that the several or severell in England was a part of the common, set apart for some particular person or purpose, and that the town bull had equal right of pasture in common and severell. It seems to me, however, that we have here another exhibition of Shakespeare's familiarity with the Law; and that the allusion is to tenancy in common by several (i. e. divided, distinct) title. Thus, — 'Tenants in Common are they which have Lands or Tenements by severall Titles, and not by a joynt Title, and none of them know by this his severall, but they ought by the Law to occupie these Lands or Tenements in common and *pro indiviso*, to take the profits in Common.' *Coke upon Littleton*, Lib. III. Cap. 4, Sect. 292. 'Also if lands be given to two to have and to hold s.[everally] the one moiety to the one and to his heires, and the other moiety to the other and to his heires, they are Tenants in Common.' Ib. Sect. 298; and see this Chapter *passim*. Maria's lips were several as being two, and (as she says in the next line) as belonging in common to her fortunes and to herself; but yet they were no common pasture."

"It was an opinion of Malone," says the editor of one of the

latest editions of Shakespeare,[1] "an opinion subsequently adopted by several other critics, that some years of Shakespeare's youth were passed in an attorney's office. There can be no doubt that legal expressions are more frequent, and are used with more precision in his writings than in those of any other author of the period. If these do not prove him to have had professional training, they help to show with what masterly comprehensiveness he could deal with the peculiarities of this, as of nearly every other human pursuit."

INTERNATIONAL LAW.[2]

Letter from the Hon. William Beach Lawrence.

THE following letter was addressed by the Hon. William Beach Lawrence, the eminent publicist, and editor of Wheaton's International Law, to Mr. Westlake, of the Chancery Bar, and Foreign Secretary of the National Association for the Promotion of Social Science. The letter was intended to be read at the recent meeting of that Association in Edinburgh, but, through some accident, it did not reach Mr. Westlake's hands before the close of the meeting. We have obtained the permission of Mr. Westlake to give the letter at length to our readers.—EDITOR L. M. & R.]

OCHRE POINT, NEWPORT, R.I., *Sept.* 22, 1863.

The circumstances under which my contributions to the last edition of the "Elements of International Law" were made, necessarily precluded any methodical arrangement. While I was writing, history was recording new incidents, and the law of nations was receiving further illustrations from diplomatic and parliamentary discussions. Some of the existing defects of the work I hope to correct in the edition in French, that I am

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[1] The Works of William Shakespeare. Edited by Howard Staunton. With copious notes, Glossary, Life, &c. In Four Volumes. Vol. I. London: Routledge, Warne, & Routledge. 1864. 8 vo. pp. lxvi—799. Vol. II. pp. 852.

[2] From the London Law Magazine and Law Review, November, 1863. We print from a corrected copy furnished us by Mr. Lawrence.

now preparing for publication by Brockhaüs, of Leipzig, in a form which will admit of a more ample development of the annotations.

I am now engaged on the *jus postliminii*, or rather, as that term is only strictly applicable to the time of war, on the rights of the parties in the nature of postliminy at the termination of hostilities. This branch of international law has not been extensively expounded by Wheaton. It assumes great importance with us, in consequence of the issue now being made at the North, as to what is to be the fate of the Seceded States and of their inhabitants, in the event of the complete success of the Federal Arms. So long ago as April, 1862, Mr. Sumner had proposed to declare the rights of these States, as bodies politic, forfeited, and to establish territorial governments in them under the authority of Congress. On this resolution no action was taken by the Senate; but the suggestion is again before the public from semi-official sources, and in a popular appeal from the senator above named.

Though it was a complaint, constantly reiterated in the instructions of our Secretary of State to our ministers abroad, that European governments had been too prompt to recognize the belligerent rights of the South (the English proclamation of neutrality was issued 13th May, 1861), the Supreme Court of the United States, at their term in March last, decided that a public territorial war, as contradistinguished from a personal insurrection, had existed since the proclamation of the President in April, 1861, and that tribunal condemned, as prize of war, neutral vessels for violating the blockade established by the United States.

Not only did the Court cite from the passage of Vattel (*Droit des Gens*, liv. 3., ch. xviii., § 290-5), which points out the distinction between insurrection and civil war, but it pronounced the existence of a public war with all the attributes of an international war, having a territorial locality. What was somewhat at variance with the views of those who had hitherto denied the right of secession, it recognized the war as made by the States in their political capacities, and, as a corollary therefrom, it declared all the inhabitants of the Seceded States, on account of their residence, and without regard to their individual loyalty, alien enemies. Indeed, among the first condemnations of the prize courts, were cases where the sole inquiry was the place of residence of the claimants.

The result of this decision may be conceded to be the suspension of all municipal rights during the war, the existence of

which would be inconsistent with that recognition, reciprocally made as it has been by both parties, through cartels for exchange of prisoners, and other acts between the belligerents which can only rest on the basis of equality. But, overlooking the fact that belligerent rights in a civil, as well as in a foreign, war are the result of pending hostilities, and that they cease the moment the contest is terminated, an issue most portentous in its consequences is presented. It is contended as a point of public law, that full effect should be given to the proclamation of emancipation issued under the assumed war power of the President, and which extends to loyal as well as disloyal masters in the Seceded States,—that all the rights of those States, embracing as well the political franchises of sovereignty as the individual property of the inhabitants, have been forfeited by the acts of the constituted authorities; that the States may be governed as subject provinces; and, ignoring all those humane maxims of modern times, which confine even the results of foreign conquests to the transfer of the sovereignty, without affecting private property, they maintain that the estates of the proprietors may be parcelled out among the soldiers of the victorious army, as was done in the case of the conquest of England by William of Normandy, or of Ireland by Oliver Cromwell.

The judicial arraignment of all the inhabitants of the Seceded States as alien enemies has not exempted them from municipal penal legislation. Disregarding the time-honored principle, as well as of our common law, derived from our English ancestors, as of international law, that protection and allegiance are reciprocal, the statute-book already contains provisions which virtually confiscate the property of Southern residents, from whom all pretence of protection had been withdrawn, especially of those in any wise engaged, even in a judicial capacity, in the administration of the *de facto* Confederate Government, as well as of the governments of the several States that have joined the Southern Confederacy, which conflict with no existing authorities, while their organization is essential to the maintenance of order and the prevention of anarchy.

I have been led into a longer discussion of matters not immediately connected with maritime law than I intended. My remarks, at least, hold this connection with the law of capture on the ocean, that if the private property of enemies is not secure by international usage from confiscation on land, no assimilation to it of private property at sea can be of any practical avail.

Since I wrote to you, in 1861, no sensible advance would seem to have been made towards carrying out the proposed amelioration in the maritime code, while many circumstances have tended to render abortive what was attempted to be effected in the Congress of Paris, with regard to privateering.

I have looked over in the *Seances et Travaux de l'Academie des Sciences Morales et Politiques, Institut Imperial de France, Liv. de Janvr.* 1861, the report of a discussion to which my attention was called by the recent work of Cauchy, *Droit Maritime International.* The arguments were principally directed to the privateer question. Giraud, as well as Dupin, regarded the abolition of privateering as an English measure, intended for the interest of that country to the prejudice of France. Their views were earnestly resisted by Michael Chevalier, who defended the abolition on grounds connected with the great interests of humanity.

Passy considered the confiscation of private property at sea as the remains of the barbarism of past times, while Wolowski regarded the vexations to which neutrals were subjected to be the real difficulty involved in the question. Suppress, he says, the capture of neutrals, and there will no longer be any means of compensating privateersmen. In the *Expose de la Situation de l'Empire, presente au Senat et au Corps Legislatif*, 1861, reference is made to the propositions which the French Cabinet were prepared to discuss with different Powers, especially with England, Prussia, and the Netherlands, respecting maritime legislation. And it appears from the *documents diplomatiques* that the French minister at Washington was authorized to make the same arrangement as was proposed by England, in regard to the articles of the declaration of Paris.

As I am not aware that any advantage can accrue, even to a good cause, from a misrepresentation, I am induced to note an extraordinary translation from Grotius (lib. 3, c. xviii. § 4), by Cauchy, t. 1, p. 64. He renders "prædationem" by "*piraterie legale* qu'on appelle l'armement en course." In this connection it may be mentioned that Grotius, being asked whether the States of Holland and West Friesland were liable for the depredations of privateers to whom they had given commissions, advised that the States were not obliged to demand security from them, since, without granting formal commissions, they might permit all their subjects to plunder the enemy, as was formerly practised; and the permission they granted to those privateers was not the cause of the damage they did to their allies, since any private person may, without such permis-

sion, fit out vessels, and sail on a cruise (De Burigny's *Life of Grotius*, p. 33).

From the incidents connected with our civil war the declaration of Paris has received in many particulars a practical construction. It would seem to be conceded that the announcement of those propositions was not authoritative as an act of legislation, but, like the condemnation of the slave trade in the treaties of Paris and Vienna, a declaration of a principle, which might form the basis of special conventions. It was, it is presumed, under this view of the matter that both England and France conceived themselves authorized to depart from the indivisible clause, and proffer both to the United States and the Confederate States an arrangement by which they might adopt the other articles, omitting the one in relation to privateering. If, indeed, the doctrines put forward in Parliament, and especially by the late Sir George Cornewall Lewis, as to the termination by war of treaty stipulations made in express reference to such a state of things, are to prevail, it would seem that the accession of a nation to the declaration, in any form, is of little importance. To you I am indebted for an able refutation of the proposition in question, and of which I have elsewhere availed myself (Lawrence's Wheaton, 2d edit. p. 474).

The offer of Mr. Seward to accept the privateer clause "pure and simple" was, as was also the treaty with regard to the slave trade, an entire abandonment of the principles ever maintained by his predecessors; while the history of the negociation as to privateering shows that it had its origin in objects wholly unconnected with the improvement of the maritime code. The attempt to gain a technical advantage is not the less disreputable to our diplomacy; because, as the archives of his department, and especially the correspondence of John Quincy Adams, when Secretary of State, will abundantly show, no treaty concluded subsequent to the *de facto* disruption of the Union could have had any effect on the relations of Foreign Powers to the Confederate States.

The Act of our last Congress in authorizing the issue of letters of marque is the more to be regretted as under existing circumstances it is only against neutrals, charged with violating the blockade, or carrying contraband of war, that these cruisers can be employed. The opposing belligerent, as is well known, has no commerce opposed to our attacks; while notwithstanding Mr. Seward's intimations in his instructions of July 12, 1862, and when the subject was previously under consideration in the Senate, men-of-war, like the Alabama and the Florida,

are of a strength not to be assailed by vessels such as there would exist any motive, on the part of private adventurers, to equip. Even M. Hautefeuille, earnest opponent as he is of the first article of the declaration of Paris, asks, "Would it not be possible to take from privateers the attributes contrary to the primitive laws, which belligerent sovereigns have given them, and which alone render them dangerous for the happiness of the world, the permission to disturb (inquieter) neutrals?" (*Droits des Nations Neutres*, tome 1, p. 182.) By the by, I regret to find in the *Westminster Review* for July, in a notice endorsing the letters of Historicus (the ability of whose work I do not mean to question), a rude attack on a publicist who has contributed more than any other author to a philosophical investigation of the relations of neutrals and belligerents. M. Hautefeuille writes to me, that he is now engaged on a work "*Des Droits et des Devoirs des Nations Belligerantes*," which will be a complement to the one "*Des Droits et des Devoirs des Nations Neutres.*"

Besides its peculiarly questionable propriety in a contest like that in which we are engaged, there is the less reason for our authorizing letters of marque, as we have already inaugurated a volunteer navy, differing from the regular navy as our volunteer land forces do from the regular army, by the temporary character of the officers' commissions. It is difficult to imagine what can be accomplished by the privateers that cannot be effected through the volunteer navy. It is true that the doctrines of Grotius's time as to the irresponsibility of governments for the acts of their private armed cruisers no longer prevail, and that, as Lord Russell stated, when proposing to the American Government an accession to the declaration of Paris, omitting the privateer clause, any Powers issuing letters of marque are liable to make good to neutrals any losses that they may sustain in consequence of their wrongful proceedings: but such contingent reparation may be a very inadequate compensation for injuries inflicted by *improvises* commanders, in ignorance of the rules, it may be, of maritime law. It is due to the Chairman of the Senate Committee of Foreign Affairs (Mr. Sumner), on whose course in other respects there is so much occasion to animadvert, to refer to his persistent opposition to the Privateer Act; and that it has not been put into operation is, it is believed, owing to the influence which he has had with the President.

It would seem from more recent parliamentary proceedings, that Lord Palmerston does not now entertain the views which

he intimated to a public meeting at Liverpool, in 1856; and from the course taken by him in the debate on Mr. Horsfall's motion, in 1862, as well as from the views expressed by others, it would seem that neither Parliament nor the Administration is, as yet, prepared for those ameliorations of maritime law which, as we conceive, are required by the great interests of the commercial world.

Of course, the proposed waiver of the privateer clause, and the course adopted in reference to letters of marque issued by the Confederate States, meet the question which Mr. Marcy directed our Ministers, in 1856, to propound to the Governments to which they were accredited, as to what would be the treatment of American privateers in case the United States should be at war with any other Power which had acceded to the declaration.

It will be recollected that, while requiring a modification of one of the articles, we accepted as declaratory of the law of nations the provision as to blockades, Mr. Marcy remarking that if there had been any dispute with regard to them, the uncertainty was about the facts, not the law. We may therefore conclude that what has been conceded in connection with the blockade of the Confederate ports will be received as an authoritative precedent in future cases. Looking to the discussions in Parliament after the Congress of Paris, as well as to some of the judgments in cases growing out of the Russian war, more serious difficulties might have been apprehended by the United States from an attempt to apply a blockade to the ports of a coast extending three thousand miles. In a debate, in March, 1857, Lord Russell said, referring to a war in America: "The effect of your maritime law is to blockade one port and leave the others unblockaded; that is to say, you might do great injury to New York or Boston, but all the other ports along the coast would be able to carry on their commercial pursuits as usual." On another occasion, July, 1857, Sir Charles Napier said, "Double or treble our navy would not be sufficient to blockade the ports of France;" while Lord Kingsdown held in the Judicial Committee of the Privy Council, that the notice of a blockade cannot be more extensive than the blockade itself, and that if it is, the neutral is not liable for a breach of blockade, even in attempting to enter a port that is really blockaded.

With these expositions of the probable practical rule as to blockade, it had appeared to me that the object of those who desired immunity of private property would be effected by the

adoption of Mr. Marcy's amendment. But the occurrences of the last two years show that President Buchanan and Secretary Cass were entirely correct in connecting the proposition with the abolition of commercial blockades, confining them, as you propose to do, to places actually besieged. Had Mr. Marcy's amendment been accepted, it is not perceived that the interruption of commerce would have been sensibly less than it has been during our war; while, as the blockade excludes Southern ships from the ocean, with the exception of what has been effected against our merchantmen by the Confederate cruisers built abroad, and whose existence raises another question, little would have been gained from it, even for the trade of belligerents. It is the blockade and not the right of belligerent capture that has so seriously affected the commercial intercouse of the civilized world. I have, you may remember, referred both to you and to Mr. Cobden in my note on this subject; Lawrence's Wheaton, 2d ed. pp. 820—826.

While noticing the declaration of Paris, I cannot omit expressing my regret that what has been achieved for neutral rights, by declaring that free ships make free goods, without detracting from the other rule that neutral property is safe in the ships of an enemy, should not have received the authoritative sanction between the United States and France and England, which it possesses in the convention made by Mr. Marcy with Russia. I fear, if the question should arise in our prize tribunals, the inefficacy of a less formal arrangement, and that, as in the case at the beginning of the war, when the Admiralty Court at New York condemned a vessel for having on board a cargo laden after notification of blockade, though the proceeding had been sanctioned by the correspondence between Mr. Seward and Lord Lyons, the right of the Executive to change the law of nations by his own authority may be denied. Notwithstanding our frequent attempts to alter the rule by convention, our courts, equally with yours, have ever held that enemy's property in neutral vessels, where no treaty provided for the contrary, was prize of war. I know not how the law, as expounded by our Supreme Court, can be changed except by the treaty-making power, which is vested in the President and Senate, or by an act of legislation. The latter course, under a constitution similar to ours, has been adopted by the Confederate States.

I have looked with much attention on the question as respects the violation of neutral obligations involved in the case of the *Alabama* and the other vessels alleged to have been built for

the Confederates in British waters, and I purpose examining the matter more fully for my French notes. As regards the sale of ships, whether armed or not, in neutral ports, as matters of commerce, I cannot think that, under the law of nations, they stand on any less favorable footing than the sale of munitions of war, both of which are included within the term used by you, of *passive contraband*; nor according to the decision of our courts do I consider the case altered by any provision of our neutrality act. Moreover, I can conceive of no right, as was attempted in the case of the Terceira expedition, to enforce your municipal laws against foreigners beyond your jurisdiction. It seems to me that the offence of the neutral is in permitting, as you express it, "the hostile use of neutral territory as the starting point of expeditions and the base of their operations." We had no neutrality act when, in the administration of General Washington, we effectually interposed to prevent French privateers being fitted out in our ports to cruise against English commerce, and went beyond what might have been required, as of strict right, in making compensation in those cases in which it was not in our power to restore the illegal prizes. The gist of the matter is using the neutral territory as the basis of a hostile expedition, and in that respect, where the ship was built or to whom it belongs is immaterial. It falls within the same category as carrying on hostilities in neutral waters, or using them in order to watch for the enemy. The distinction to which I allude is well traced in the case referred to on the trial of the *Alexandra*, though the controlling portion of Judge Story's judgment does not appear in any report of the Chief Baron's opinion which I have seen. Judge Story, after stating that the capturing vessel had been sent from Baltimore to Buenos Ayres as American property, which he deemed a commercial adventure and not illegal, and there sold to the government of that country, by which she was made a public ship of war, restored the property in question, which had been captured by her on a subsequent cruise, to the Spanish claimants. The decision was founded on the fact that after the *Santissima Trinidad* had become an acknowledged public vessel of Buenos Ayres, she had, preparatory to the cruise in which the goods were taken, enlisted an additional crew and strengthened her armament by the purchase of a tender in the port of Baltimore. (Wheaton's Reports, vol. vii. p. 340 — *The Santissima Trinidad.*) In the same volume is the case of the *Gran Para:* p. 487. There the property, though the capturing vessel was not commissioned as a privateer till her arrival in the Rio de la Plata,

continued in the same party who had purchased her in Baltimore; and the court were of opinion that she was armed and manned there for a cruise.

The most delicate question, if not the most difficult, to which the late prize cases have given rise, concerns the right of capture of a vessel going to a neutral port with the intent to sail from thence to a blockaded port, or resorting to a neutral port with the intention of using it for the introduction of contraband into the enemy's country. The decisions on these points have not, as far as I am aware, received in reference to the cases arising during this war the adjudication of the Supreme Court. In referring to the books, I find that Wildman, as well as our American authors Duer and Halleck, pronounce more emphatically than the cases would seem to warrant against the neutral cruisers. I appreciate your criticisms as to those cases which relate to the indirect trade of a citizen of the belligerent country with the enemy. They fall within the general interdict of all intercourse of that nature.

The other cases from the English reports generally relate to a violation of British orders in council of questionable validity, or to infractions of the rule of 1756, which, during the wars growing out of the French revolution, was a source of constant difficulty between the United States and England. The arrangement which at one time was understood to be agreed on between the two Governments, without any concession, on our part, of the principle contended for by England, as to the colonial trade, was to consider the continuity of the voyage broken by the cargoes being landed and the duties paid on them.

It is somewhat extraordinary that the Congress of Paris, in touching on the matters included in the declaration, should have omitted a definition of contraband, as to which of all matters connected with the subject the most doubt existed. On this point, I presume that we are to consider, as the authoritative exposition by your Government, the note of Earl Russell to Lord Lyons, of January 23, 1862, and which, omitting the suppressed clause from Bynkershoek, confines contraband to arms, munitions of war, and soldiers;—the rule as adopted on the continent. (*See* Lawrence's Wheaton, 2d ed. p. 801.) The suggestion in my letter of last year was made with the endeavor to render unnecessary the visitation and search, in time of war, of neutral vessels; and for which, if the declaration of Paris as to enemy's property in neutral vessels, and neutral property in enemy's vessels, be universally adopted, there would

no longer be any pretext, unless it be on account of contraband. Your objections I find are to any enlargement of the law of blockade, or to any apology for its extension. Should your views prevail and blockade be confined to places besieged, it seems to me that it would perfect the system of commercial freedom to abrogate the whole doctrine of contraband. This is a subject which I should be glad to discuss further, did not my watch remind me that, if I expect to write to you by this week's mail, my letter must be at once despatched to the post-office.

I will only venture to add that the importance of the questions of maritime law, now the subjects of debate, points out the necessity, with the view of diminishing the causes of future wars, of their authoritative settlement by the general concurrence of nations. Associations such as yours may mature the public mind for an international congress, for the assembling of which a proposition was introduced into the House of Representatives in 1861–2.

I am, my dear Sir,
Yours very truly,
W. B. Lawrence.

John Westlake, Esq.

RECENT AMERICAN DECISIONS.

District Court of the United States.—Western District of Michigan.

United States *v.* Chapel.

United States *v.* Crosby.

November 11, 1863.

A failure to take out a license or a neglect to affix stamps as required by the Internal Revenue Law, are indictable offences.

The motion to quash the indictment against Jared Chapel, for being engaged in the business of a lawyer without a license, and the demurrer to the indictment against Lysander Crosby, for making three promissory notes, each for more than twenty

dollars, without being duly stamped to denote the duty imposed thereon, I will dispose of together.

Both motion and demurrer have been argued, upon the distinct ground that the remedy by indictment does not exist, and that the only method of proceeding for a violation of the statute is by action or information of debt, to recover the penalty.

There is this difference, however, between the two cases: to the pecuniary penalty imposed for being engaged in any business named in the section 64 of the Internal Revenue Law, without a license, a subsequent statute has added punishment by imprisonment upon conviction; whereas, the provision requiring stamps to be placed on instruments imposes, for a violation, only a pecuniary penalty.

In order that we may intelligibly investigate and consider the question presented, we need, first, to look at the nature and purpose of penal statutes.

"An offence," says Mr. Wharton, "which may be the subject of criminal procedure, is an act committed or omitted in violation of public law, either forbidding or commanding it." 1 Whart. Cr. L. § 1. Misdemeanors at common law comprise all offences less than felony, which may be the subject of indictment, and these are divided into two classes—those penal at common law, and those penal by statute. § 3, same volume.

There are two sorts of penal statutes which create offences; one where the statute enjoins or forbids an act, without declaring the omission or commission of the act indictable; the other, where the omission or commission is made specifically indictable. Whart. § 10. It is a well-settled rule of criminal law, that a statute which enjoins or forbids an act, that is not at common law a misdemeanor, and imposes a pecuniary penalty for its violation, creates, technically, an offence. 1 Gallison R. 180.

But, is it an offence which is indictable? I regard this question as put beyond controversy by the authorities.

Mr. Wharton says—section 10, same volume,—"If a statute prohibits a matter of public grievance, or commands a matter of public convenience, all acts or omissions contrary to the prohibition or command of the statute, being misdemeanors at common law, are punishable by indictment. See § 1, before referred to; also 1 Russell on Cr. p. 49.

Now, there is this distinction to be observed—some penal statutes simply prohibit or command an act, without imposing any penalty or punishment for a violation thereof, and without

prescribing a mode of punishment; other statutes prohibit or command an act, and impose a pecuniary penalty upon any person committing an infraction of its provisions—sometimes prescribing a mode of recovery, and sometimes not naming any remedy.

There is no disagreement in the authorities, that where a public statute enjoins or forbids an act without imposing any penalty or punishment, a violation of its provisions is a misdemeanor, for which the person can be indicted and convicted, and, consequently, punished by imprisonment. 1 Russell on Cr. p. 49; 1 Whart. Cr. L. § 10; 1 Burrow, *Rex* v. *Wright*, 543; Lord Mansfield opi. p. 4; 4 T. R.; The *King* v. *Harris*, 202, all the judges concurring; Ld. Kenyon, Ch. J.; Ashhurst, Buller, and Grose, J.J.

The next consideration is the United States statute, under which the indictments are drawn.

It cannot be claimed that the statute has made the acts complained of in either indictment, viz.: making promissory notes without stamps, and being engaged in the business of a lawyer without license, specifically an indictable offence; that is, the statute does not expressly declare that either shall be the subject of indictment.

The statute which requires lawyers to pay a license of ten dollars is as follows:

"Sec. 57. And be it enacted that from and after the first day of August, 1862, no person, association of persons, or corporation, shall be engaged in, prosecute or carry on either of the trades or occupations mentioned in section 64 of this act, until he or they shall have obtained a license therefor, in the manner hereinafter provided."

Section 64 mentions the occupation of a lawyer; then section 58 enjoins the duty, upon every person desiring to obtain a license, of registering with the assistant assessor his name, occupation for which he desires a license, and the place where he proposes to carry on the same; and

Section 59 enacts that every person, who shall carry on such occupation without taking out a license as in that behalf is required, shall, for every such offence, respectively, forfeit a penalty equal to three times the amount of duty or sum imposed for such license—one moiety to the use of the United States, the other to the person who shall first discover or give information of the fact whereby said forfeiture was incurred. (12 Stat. at Large, 453.)

I need spend no more time to show that the rule in reference

to penal statutes unquestionably is, that it is an indictable offence to violate a public statute which enjoins or forbids an act; and if so, it is such indictable offence to engage in any business, trade or occupation, forbidden by section 59 of the Act of Congress in reference to internal revenue.

That section simply forbids the act, and does not declare any penalty, or prosecute any remedy; and so with section 58. If Chapel desired to obtain a license, and willfully failed to register his name, etc. with the assistant assessor, and was afterwards found practising law without a license—which would be evidence that he did desire a license—he has violated another plain command of a public statute, and thereby committed an offence which all the authorities agree is indictable.

The law, as contained in Russell on Crimes, vol. 1 p. 49, and in the other authorities to which I have referred, cannot be questioned, viz.: "Where the statute commands or forbids the doing of a thing, the doing or omission of that thing wilfully, although without corrupt motives, is indictable."

But the 59th section expressly provides that the person who carries on such occupation, etc. as is named in section 64, shall forfeit a pecuniary penalty; and a subsequent act adds to that penalty, on conviction, imprisonment, in the discretion of the Court, not exceeding two years. Whatever might be said as to the remedy by indictment, under the provisions of section 59, in the absence of the later statute imposing imprisonment on conviction, it is clear that this latter provision establishes the intention of the law makers to be, that carrying on a business without license, when one is required, is not only an offence, but one punishable by indictment. For there can be no judgment or sentence of imprisonment in a civil proceeding; and hence, by necessary implication, if not expressly, the remedy by indictment is given by Congress for a violation of section 59.

It will result from the views already expressed, that the motion to quash the indictment against Jared Chapel, for engaging in the business of a lawyer without a license, must be denied.

Let me briefly recapitulate. The indictment and the law in Chapel's case are regarded in this wise: First, one count of the indictment charges a violation of section 59, which section forbids the act complained of; the section nor act prescribes no punishment or remedy for an infraction of this section, and so: Second, Another count charges a violation of section 58, and this section enjoins the act, for not doing which the charge is brought. The remedy for an infraction of either of these sec-

tions is clearly by indictment, as the authorities agree. It will be noticeable the statute gives no penalty, punishment or remedy for a violation of either section; and being a public statute, one provision forbidding the other commanding the doing of certain things, the sole remedy is an indictment for an offence, and the punishment imprisonment. And third: One other count charges a violation of section 59. This section imposes a pecuniary penalty if certain business is exercised or carried on without a license. The remedy here is two-fold, by an action or information of debt, because section 31 expressly gives the right to recover, by action or other appropriate form of proceeding, and by indictment, because the subsequent statute of March 3, 1863 (§ 24, p. 727, 12 Stat. at Large), clearly gives, by necessary implication, this remedy.

I will now turn more particularly to a consideration of the demurrer to the indictment against Crosby:

The arguments made and authorities adduced in the two cases, by the respective counsel for the respondents, were not fully answered or refuted; and in the absence of existing authorities, I confess, I took the papers in this case not wholly free of doubt, because of the seemingly direct authority read to sustain the demurrer on the principal point, viz.: That where a statute imposes a pecuniary penalty for the doing of a particular act, the remedy by indictment will not lie, but only a civil action to recover the penalty, unless the statute expressly give indictment.

I will recur to the principal authorities cited by counsel for Crosby, and some of the leading authorities, declaring what I regard the correct rule of law governing the question.

There can be little doubt, I think, but the usual and almost universal practice, in the Courts of the United States, has been to enforce the payment of pecuniary penalties, given by statute, by civil and not criminal proceedings. And so Judge Story, in the case of *Mathews* v. *Offley*, 3 Sum. 120, says: "Upon general principles, when a pecuniary penalty or forfeiture is inflicted for a public offence or money, it seems clear that the action to recover the penalty or forfeiture must be brought in the name of the government, and not in the name of a private party, unless some other mode for the recovery is prescribed by some statute; and the usual remedy, in cases of a pecuniary penalty, is an action or information of debt by the government itself." Such was claimed to be the practice on the argument, and I am satisfied that such has been the usual practice.

The case of *Adams* v. *Wood*, 2 Cranch 336, does not go

the extent claimed for it, viz.: authority that an indictment does not lie. The Court says: Almost every fine or forfeiture under a penal statute may be recovered by action of debt as well as by information. I do not see that this is even negative authority.

Neither can I regard the case of the *United States* v. *Mann*, 1 Gall. R. 180, and the case of *Ex parte* Maryland, 2 Gall. R. 552, as changing the former settled rule; though Judge Story refers in the case of the *United States* v. *Mann*, to *Rex* v. *Malland*, 2 Strange, 828, where he says it is laid down as law "that where a pecuniary penalty is annexed to an offence, and no mode of prosecution is prescribed, an indictment does not lie therein, but only an information of debt on the exchequer."

It is true that the statute we are considering would seem to be within the rule of *Rex* v. *Malland*, as adopted by Judge Story. But, on further examination, we shall find *Rex* v. *Malland* to stand quite alone, and opposed to many other cases in the English courts; and, inasmuch as the question of the indictability of an offence, under a penal statute, was not argued or averred in the case decided by Judge Story, it cannot fairly be claimed that the rule quoted from a single case, which is opposed to many other authorities, should be controlling. And what is said by the same eminent judge in *Ex parte* Maryland, that an indictment does not lie in such cases is sustained by reference only to *Rex* v. *Malland* and *Wood* v. *Adams*—the latter of which does not at all involve the question.

The Judge in the subsequent case to which I have referred, *Mathews* v. *Offley*, (3 Sum. 120), which was an action of debt to recover a pecuniary penalty, for violating a public statute, says: "It has been held that a suit will not lie by a common informer, for such penalty, unless power is given to him for that purpose by statute; neither will an indictment lie for such a penalty unless also specially allowed by statute, for it is properly recoverable as a debt in a court of revenue by government, and is in no sense a criminal proceeding."

The language of Judge Story, in the two last cases to which I have referred, is broad enough to overturn what was before a well-settled doctrine, provided what he says is to be regarded and held as law. Inasmuch, however, as Mr. Justice Story does not refer to the authorities, long existing, on which a contrary rule rests, thus showing that he did not himself consider that he was differing with authorities on the question, I cannot think it was intended to go so far as the language imports,

in opposition to a well-settled rule of law governing penal statutes.

Indeed, well-settled rules of law, resting firmly on time-honored authority, are not overturned by the opinion a court may express on points either not within the case under consideration, or, if so, not without taking some notice of the former authorities on which the contrary doctrine rests. I will recur to a few authorities, to show the law to be otherwise than the language of Judge Story would indicate it to be.

And first, I read from Sedgwick on Stat. and Const. L. 96: "Where a statute prohibits an act to be done under a certain penalty, though no mention is made of indictment, the party offending may be indicted and fined to the amount of the penalty; but where it is merely provided, that if any person do a certain act, he shall forfeit a certain sum to be recovered by action of debt, no indictment can be supported."

If a statute enjoins an act to be done without pointing out any mode of punishment, an indictment will lie for disobeying the injuction of the legislature. And I refer to, as fully sustaining these views, I Chitty Crim. L. 162; Cro. Eliz. 635; 2 Just. 131; 1 Whart. Cr. L. § 10; 1 Russell on Cr. pp. 49, 50; 1 Burrow, *Rex* v. *Wright*, 544 and 545; 4 Term R. *The King* v. *Harris*, 204 and 205.

I wish to notice one further distinction in reference to penal statutes, before adverting to the sections of the statute in reference to stamps on notes, &c. viz.:

"Where a statute prohibits an act which was before lawful, and enforces the prohibition with a penalty, and a succeeding statute, or the same statute in a subsequent substantive clause, describes the mode of providing for the penalty different from that by indictment, the prosecutor may, notwithstanding, proceed by indictment upon the prohibitory clause as for a misdemeanor at common law, or he may proceed in the manner pointed out by the statute, at his option; but if the manner of proceeding for the penalty be contained in the same clause which prohibits the act, the mode of proceeding given by the statute must be pursued, and no other." And the reason is said to be, that the express mention in the same clause of any other mode of proceeding impliedly excludes that by indictment. 1 Whart. Cr. L. § 10, par. 3; 1 Russell on Cr. pp. 49, 50, and the authorities last before referred to.

But I regard the case of *The United States* v. *James Bougner*, 6 McLean, 281 as fully an offset to Judge Story's opinion, and as giving a just and correct rule, viz.: "In all cases

where an act is declared to be unlawful, and a punishment or penalty is annexed to the doing of the act, it pertains to the sovereignty of the State, through the agency of the judicial department, to punish it by indictment. And it does not require any express statutory authority to warrant such a proceeding."

If we now carefully read sections 94 and 95 of the statutes, it will not be difficult to determine whether an indictment can be sustained on those sections. As I have said, it was argued that there was no prohibition against making instruments in writing, without paying the duty or fixing thereon stamps, but only a penalty imposed for doing so, which could be collected in a civil action alone.

If we remove from section 94 words that do not affect its sense or meaning for our present purpose, and retain only those words that are necessary to our present examination, it declares as follows, viz.: "That * * there shall * * be paid, for and in respect of the several instruments * * * mentioned in schedule B, * * * by any person * * * who shall make * * * the same * * * the duty or sum of money set down in figures, against the same, or otherwise specified or set forth in said schedule."

That does not mean merely, a person may do so, but it declares he shall, that is, it positively requires and commands every person who makes a note for over $20 to pay the duty imposed thereon. And the law is, that a wilful violation of that command is an offence, and may be punished by the statute, as will be noticed, not fixing any punishment or mode of proceeding.

Section 95 declares, substantially, that if a person makes a note, etc. without the same being stamped for denoting the duty imposed thereon, or without having thereon an adhesive stamp to denote such duty, such person shall incur a penalty of fifty dollars; but does this section not prohibit the act by imposing the penalty upon those who shall make the instrument, as clearly as though by direct word of prohibition? I think so, and that the remedy, under this section, comes under the rule in Sedgwick on Statutory and Constitutional Law, and the other authorities cited. At the same time, an action or information of debt may be brought to collect the penalty, at the option of the prosecutor; and, indeed, section 31 clearly gives a civil action to recover any pecuniary penalty named in the act.

It will be further noticed, that section 95 provides the penalty,

but does not give the mode of recovery; and hence, the remedy by indictment, under the distinction clearly made (sec. 10, 3d par. 1 Wharton Cr. L.) and supported by ample authority, that where the remedy is not provided in the same clause that gives the penalty, but in another substantive clause, the prosecutor may elect to proceed as for a misdemeanor, at common law or by civil suit.

I am entirely satisfied that the rule of law governing statutory penalties is well defined and established, not only by elementary writers, but by adjudicated cases of high authority, and to be in accordance with the views I have expressed. Whatever may be said of the policy of adopting the remedy by indictment, rather than to collect the penalty by civil action, there is no doubt as to the right. And I may add that I see no objection to the government taking the remedy by indictment; for, if the action of debt, in all cases, was resorted to, it is fair to presume that in half the cases the government would be beaten on the execution. There being no imprisonment for debt, those without pecuniary responsibility might violate the statute with impunity, and the government would practically, in such cases, be remediless; there would be no use suing in debts where there could be no collection of the penalty and costs of suit, for want of property in the defendants.

I see no objection, therefore, to the remedy by indictment. If a man will violate a public statute, which exacts no more of him than duty and patriotism demand, he has no right to complain, if the government, whose laws he has broken, adopt a mode of prosecution that is sure to prove effective.

The demurrer is overruled, with leave for defendant to plead to the indictment, and, as before intimated, the motion to quash in the other case is denied.

Supreme Judicial Court of New Hampshire.

HEATH *v.* DERRY BANK.

Hillsboro' County, December Term, 1862.

The peculiar rights of sureties originated in, and are exclusively the growth of equity; and it was formerly held that the remedy of the surety was only in equity, and could not be made available in courts of common law.

But in this State (as in most of the United States) it is held that the liabilities of sureties are governed by the same principles at law as in equity; and generally the same considerations which are sufficient in equity to discharge a surety, will be available for the same purpose at law.

In such cases where equity had originally exclusive jurisdiction, but where courts of law have now assumed to exercise the same equitable jurisdiction, both courts will continue to exercise concurrent jurisdiction, and a party may apply to either for relief; while in other cases, the general rule is, that equity will not assume jurisdiction of a case where a party has a full and sufficient remedy at law.

A party will be estopped in equity and in law from saying that he was not what he represented himself to be, if another has acted upon that representation.

Hence where several persons had signed a note in which they jointly and severally and "all as principals" promised to pay, etc. each signer will be estopped in equity as well as at law to plead or to prove that he was only a surety, and that this fact was known to the payee, or to claim any of the equitable rights or privileges of a surety as against the payee, which in his contract he has agreed to waive and abandon.

Equity will not assume jurisdiction in a case between a creditor and his principal debtor, when the latter has a sufficient remedy at law.

A principal debtor will be discharged from his contract to his creditor only by performance, or satisfaction, or by a legal discharge either by act of the creditor or by operation of law.

Raymond *v.* Putnam & Chase.

Hillsboro' County, December Term, 1862.

When the amounts invested by partners in the capital stock of a firm are unequal, and one article in the co-partnership agreement provides that all profits and losses shared, be shared *equally*, and another provides that at the close of the company the assets and property shall be divided between the partners in proportion to their investment, in making a distribution of assets at the close of the company, all losses will be first considered and equalized, though no profits or losses have been adjusted or declared during the continuance of the co-partnership.

In such a case, if there be a loss equal to or greater than the entire capital of the company, the loss must be apportioned equally; and although all the property of the firm be destroyed or lost, yet each partner would, under those circumstances, have a right to an account and to have the loss equalized.

State *v.* Livermore.

Sullivan County, December Term, 1862.

A saw-mill is not necessarily a building within the provisions of Revised Statutes, Chap. 215, Sec. 2, which prohibits the burning of "any building" other than a dwelling-house, etc.; and therefore an indictment founded on that provision of the statute, which charged the respondent with burning "a saw-mill," will be quashed, on motion.

Moore, Apellant, *v.* Taylor, Administrator.

Cheshire County, December Term, 1862.

Upon appeals from commissioners on insolvent estates, it is within the discretion of the court to allow the creditor to testify in his own favor, as well as to compel him to testify in favor of the estate, upon a proper case made, whether the administrator elects to testify or not.

But the creditor is not entitled as matter of right to be thus admitted as a witness in his own favor.

Arlin *v.* Brown.

Merrimack County, December Term, 1862.

Whether the doctrine of the English Chancery in relation to the equitable lien of the vendor of real estate, upon the estate sold for the payment of the purchase money as against the vendee and his heirs, is part of the law of this State. *Quære?*

But however that may be, no such lien will exist, where no purchase money is agreed to be paid for the land, but when the only consideration for the conveyance is the agreement of the vendee to support and maintain the vendor during the life of such vendor.

Bean *v.* Coleman.

Rockingham County, June Term, 1863.

Nothing passes as incident to the grant of an easement but that which is necessary for its reasonable and proper enjoyment.

The grant of a private passway or right of way over a portion of the grantor's land, without any reservation of the right to erect bars or gates across said way, does not necessarily imply a negation of the owner's right to inclose his land and to erect gates across said way.

Notwithstanding such a grant, there remains with the grantor the right of full dominion over, and use of the land, except so far as a limitation of his right is essential to the fair and reasonable enjoyment of the right of way which he has granted.

Ford v. Danbury.

Grafton County, December Term, 1862.

The only distinctive marks of a highway petitioned for are its termini.

A highway laid from one terminus described in the petition, about half the distance to and in the direction of the other terminus, and stopping there, cannot be said to be the same highway petitioned for.

A petition for a highway wholly in defendant town was presented to the selectmen, who refused to lay the highway. A similar petition was presented to the Court and referred to the county commissioners, who reported in favor of laying a highway, commencing at one terminus and extending towards and about half way to the other terminus, described in the petition. The report was set aside upon the ground that the commissioners should affirm or reverse the preceedings of the selectmen, as a whole, and that the court had not jurisdiction to lay this highway recommended by the commissioners, since the selectmen had never been petitioned to lay that highway as a distinct route.

But the petition was recommitted.

Eastman and Wife *v.* The Amoskeag Manufacturing Company.

Hillsboro' County, December Term, 1862.

When testimony is admitted on trial, which is incompetent as the case then stands, but which is afterwards made competent by the introduction of other evidence, the verdict will not be set aside even though such testimony was admitted upon erroneous grounds, and without any anticipation of its afterwards being made competent by other evidence.

The admission of an independent fact, made during negotiations for a compromise of a controversy, is competent evidence against the party making such admission. And the fact thus admitted need not be independent of the subject matter of the controversy: all that is required is that it be a distinct admission of a fact, as distinguished from an offer to buy peace, or compromise controversy.

Slight secondary evidence of the contents of a paper, is sufficient against the party who might remove all doubts by producing the original, but refuses to do so after proper notice.

The presiding justice at a trial term may, in the exercise of his discretion, if a proper case be made, suspend any of the rules of Court in a given case, and his action will not ordinarily be subject to revision at the Law Term.

In questions relating to heights and distances, and to the number, quality and dimensions of objects, a witness who has not absolute knowledge on the subject by measuring, counting, &c. may not be able to testify without an implied expression of opinion; but that is no objection to the testimony upon such questions and subjects.

A party erecting a mill-dam on his own land which causes the water to overflow the land of another is not exonerated, by conveying the land and dam to a third person, from responsibility for damages arising from such flowage after such conveyance.

No request or notice to abate the nuisance is necessary before bringing suit against the original wrong doer in such case, for the damages done, but the grantee of the nuisance is not liable to the party injured until upon request made he refuses to remove the nuisance.

But where the land injured by the nuisance has been conveyed since the erection of the nuisance, the purchaser stands in the

same position of the vendor. He may sue the original wrong doer, the person who erected the still maintains the nuisance, without notice or request to abate, for the damage done to the land while he owned and occupies it. Nor does it matter how many times the land injured may have changed hands since the erection of the nuisance.

Certain instructions were given and others requested and refused, all based upon the assumption that no actual damage had been done the plaintiffs, in flowing their land, and that they were entitled to nominal damages only. The jury returned a verdict for the plaintiffs for $200. Held, that upon this finding all these instructions became immaterial.

An act of the Legislature authorizing a corporation to build a dam on their own land, upon and across a river which is a highway, merely protects the corporation from an indictment for a nuisance in obstructing the river; but if, in building their dam, they overflow the land of others, such act of the Legislature does not protect them against liability for such flowage.

Paine and Blunt *v.* Drew.

Strafford County, December Term, 1862.

The provisions of the Statute of Limitations, that "if the defendant at the time the cause of action accrued, or afterwards, was absent from and residing out of the State, the time of such absence shall be excluded in the computation of the several times before limited for the commencement of personal actions," applies to defendants who have never resided in the State, as well as to those who have once resided in it and have removed from it.

Citizens of other States are allowed to sue in our courts upon the same ground on which our own citizens stand, and with the same rights in the application of the remedy that the latter possess.

Therefore a citizen of the State of Maine suing a citizen of Massachusetts in our courts, and the court having acquired jurisdiction of the parties by legal service upon defendant, the Statute of Limitations is not available as a defence in any other manner than as though the plaintiff was a citizen of this State.

Ordinarily the Statute of Limitations of a State does not in any way attach itself to or affect the contract; it is no part of

the *lex loci contractus*, but it affects and limits the remedy merely, and belongs purely to the *lex fori*.

Hence such a statute does not operate as a discharge of a contract, or as a defence against the contract itself, but is interposed as a bar to the maintenance of an action; it limits the time within which the remedy must be pursued or applied.

An action may be maintained in our courts, when not barred by our Statute of Limitations, upon a contract made in another State, though an action thereon may be barred by the statute of the State where the contract was made and was to be performed.

Cole *v.* Hills.

Belknap County, December Term, 1862.

Where a note was intended by both parties to be made payable to Benjamin Cole, but was accidentally written payable to Benjamin R. Cole, the erasure of the letter R, in the name of the payee, would be an immaterial alteration, and would not avoid the note if made by the payee after delivery.

And when a material alteration is apparent upon the face of an instrument and is not noted as being made at or before the signing, the instrument, may nevertheless be given in evidence to the jury, without previous evidence of the time when the alteration was made, and explanatory of such alteration.

In such case the instrument, with all the circumstances of its history, its nature, the appearance of the alteration, the possible or probable motives to the alteration or against it, and its effect upon the parties respectively, ought to be submitted to the jury, and they must determine from all these and other circumstances when the alteration was made, and whether fraudulently made or otherwise.

The presumption that a material alteration in an instrument was made after its execution, arises when there is an entire absence of evidence, and of circumstances, both in the instrument itself and *aliunde*, from which any inference can be legitimately drawn as to the time when the alteration was actually made; or when any such evidence or circumstances exist in a case, the presumption arises only when the jury, upon a consideration of all such evidence and circumstances, are unable to find when the alteration was made; the presumption being one of fact for the jury, and not one of law for the court. When illegal interest has been paid in advance upon, or

is included in a note by the principal, a surety who is compelled to pay the note, will be entitled to the same deduction that the principal would, in the same circumstances, on account of the usury; which would be three times the amount of the illegal interest, if the usury were pleaded, or the amount of the usury if not pleaded.

Burnham *v.* Kempton.

Merrimack County, December Term, 1862.

If the owner of the land on one side of a river erects a mill-dam across the river, and abuts the same upon the opposite shore, and continues and maintains the same for twenty years in that position, that would be evidence of a grant or right to build and maintain such a dam, constructed and used substantially in the same manner.

But it is not evidence of a right to appropriate all the water power that might be created by such dam to the use of the person who thus built and maintained the dam.

A dam is an instrument for turning water to the use of a mill, as a bulk-head is the means of drawing the water from a dam; but neither may in fact have been used for either purpose at all, or if at all, in any such a way as to change or effect the original rights of the riparian owners on either side.

Twenty years' use of the water of a stream in a particular way is evidence of a right thus to use the water.

The same proof of user which establishes the right is equally conclusive in establishing the limitation of that right.

Want of equity is not only good ground of demurrer to a bill, but is a good ground of defence where no case is established upon the *merits*, and this includes cases where the plaintiff's right proves to be one at law and not one in equity.

Ordinarily courts of equity will exercise a concurrent jurisdiction with courts of law in cases of private nuisance, only when they can restrain irreparable mischief, suppress interminable litigation or prevent a multiplicity of suits.

And in such cases courts of equity will not ordinarily take upon themselves to decide the fact that a nuisance exists, when that fact is controverted, but will require that the party asking the interference of the court shall first establish his right at law.

But in some cases, where the party has been long in the quiet and uninterrupted enjoyment of a right, or when the injury threatened would be irreparable, another party will be restrained

from interfering with that right, or doing that injury until he establishes his right at law.

Nor does that large class of cases involving an inquiry into the rights of the owners of water power in connection with mills and machinery, stand upon grounds substantially different in these repects, from other cases of private nuisance.

When the rights of several owners in the same water power or privilege are admitted or have been established at law, a court of equity will entertain jurisdiction to regulate the use of the water, and to fix and establish the extent of their respective rights, so as to give each proprietor or owner the just proportion of water to which he is entitled.

But a court of equity will not entertain jurisdiction of a cause under any pretence of adjusting rights in common to water power, when it is apparent that all that is sought by the parties, or either of them, is to settle and establish a disputed right, for the establishing of which the parties have a plain and perfect remedy at law.

Rollins *v.* Horn.

Carroll County, June Term, 1763.

When there are mutual accounts between the parties, and the plaintiff brings suit on his claim, and the defendant files his account in offset, the plaintiff may plead the Statute of Limitations to this offset, but only so much of the defendant's account will be barred by the statute as had accrued more than six years prior to the date of the plaintiff's writ.

Barnes *v.* Union Insurance Company.

The omission in an application to a Mutual Insurance Company for insurance, to mention an existing policy in the same company, does not render the policy void; but the policy will be confirmed by the assent of the directors to a transfer of the policy, all the facts appearing on their records.

Notice of loss will not be rendered ineffectual, by the omission to mention that the debt of the assignee as mortgagee, was also secured on other property.

Where property is assigned, with the assent of the directors of the company, an assessment against the original assured, and notice to him, will not cause a suspension of the policy. The

assignee, after the assent of the directors, is the party entitled to notice.

Notice of loss given by the assignee in such case is sufficient.

State on Relation of George Hodgdon *v.* John Q. A. Libbey.

Strafford County, March, 1863.

The parental rights and duties cannot be permanently assigned or transferred by a parol agreement; and therefore such agreement may be revoked by the parent on refunding the sums of money expended under it.

In such a case, on *Habeas Corpus*, the custody of a child will ordinarily be awarded to the father unless the relation between the child and the respondent, under the agreement, has been of such duration and character that the happiness of the child would be endangered by severing it; or unless from the unsuitableness of the father for the trust, or other cause, the permanent interests of the child were likely to be sacrificed.

Kelly *v.* Ellison, and Trustee.

A trustee has the right to set off all bona fide claims, which he holds against the principal debtor at the service of the process, though the property in his hands may have come into his possession by an arrangement with his debtor, which was clearly fradulent as against creditors.

McClure *v.* Melendy.

A wife devised to her husband the use and occupancy of certain land during his natural life. A creditor levied upon his estate, and had it set off by appraisal of his whole interest. It was held, that the devise was of the land itself; the levy by appraisal of the whole life estate was good; and that it was not necessary to set it off by an appraisal of the annual income to hold till the debt was paid.

Dennett *v.* Dennett.

On a petition for a re-hearing in chancery, on the ground of newly discovered evidence tending to show the incapacity of

a grantor to execute a deed, it is not enough to show new evidence of medical experts, tending to show that the grantor's health had been much impaired for several years by apolectic, or other fits; that he probably was affected by disease of the brain, which is usually accompanied by an impaired state of mind. Mere weakness of mind does not disable a man to convey property, if the capacity remains to see things in their true relations, and to form correct conclusions. If the mind is so impaired, that the memory cannot recall the necessary facts, nor the judgment be exercised in drawing just conclusions, the power of disposing of property is gone. The evidence must show the degree in which the mind is impaired, to be inconsistent with the rational transaction of business.

Kimball *v.* Marshall.

Where by the charter, the day of meeting of the mayor, aldermen, and common council for the election of a city clerk, is appointed to be the same day, on which the city officers elect are required to assemble and take the oath of office, one half of the aldermen cannot defeat a legal election, by absenting themselves for the purpose of leaving that board without a quorum.

They are bound to be present at all times, when the board is in session, till the election is made; and if a recess, or adjournment to a later hour, is voted, they are bound to take notice of the time of meeting.

Steere *v.* Little.

If a question is admitted in the exercise of the discretion of the Court to admit leading questions in certain cases, that discretion will not be revised.

If a question is objected to as leading, and admitted generally, and an exception served, the question reserved is, whether the question is leading, unless the case shows it to be admissible within the exceptions to the rule.

The question "have you traced the dividing line through your lot?" the position of the line being the matter in dispute, is admissible, being merely introductory.

State what L. said as to holding by virtue of your deed all but fifty acres of said lot? is leading, because it assumes that the claim related to "all but fifty acres."

State whether L. denied the right of S. to hold what his deed

covered, by reason of an agreed line? If so, what line? is admissible, the object being to prove what was *not* said.

A wife's declarations are not evidence against her husband, though she is a party, and the suit is brought in her right.

A wife's declarations are not evidence, because the husband was where he might have heard them. It must be shown, that he was attending to what she said.

Atherton *v.* Tilton.

If a request to charge the jury states a proposition true in general, but not so in its application to the case on trial, the instruction should not be given.

A laborer, or salesman, who is to be paid monthly a share of the net profits of the business, having no other interest in the property, or profits, is not a partner with his employer as between themselves.

He may be held liable as a partner for debts contracted in the business; but will have no rights as a partner in debts due for property sold to others.

What is said by the parties to a sale, relative to it, during its negotiation, may be admissible as part of the *res gestae*.

Fairbanks *v.* Childs.

An application to the fence viewers may embrace the division of the fence, its sufficiency, and the limitation of a time to build or repair it.

The division of the fence and the limitation of a time to repair it, are distinct subjects, and notice of both must be given. The fence viewers cannot act upon the time of repair, without notice of that subject being given to the adverse party.

Unless the proceedings limiting the time of repair are valid, the plaintiff cannot recover under the statute for building defendant's part of the fence.

Graves *v.* Amoskeag Company.

In a real action, the general issue admits the defendant's possession. It must be denied by a plea of non-tenure, or disclaimer.

The plaintiff must show title from the State, or actual possession in himself, or in some person under whom he claims, or he cannot recover.

A party is never presumed to have entered on land. If he has entered, he will be presumed to have entered according to his title.

A deed of "a road two rods wide from the east side of a ferry to the great road," conveys an easement only, not the land itself.

The deed of a party entitled to an easement only, though in terms broad enough to convey the land, conveys only the easement.

Doolittle *v.* Lyman.

Cheshire County, July Term, 1863.

A party to establish the validity of a note given to him for intoxicating liquor sold by him in this State, must show that he was legally authorized to make the sale.

Where a party claims that a sale of intoxicating liquor made in another State is illegal under the laws of that State, the burden of proving the law that makes the sale illegal is on him.

A mortgage of personal property executed in due form and recorded, given to secure the debt described in the condition, which is a debt actually and justly due from the mortgagor to the mortgagee, is not rendered void as against a subsequent purchaser by the mere fact that the parties to it may have also designed to hinder or delay the creditors of the mortgagor.

Scott *v.* The Manchester Print Works.

Hillsboro' County, June Term, 1863.

Where real estate is attached, the officer serving the writ gains no right of property in or possession of the real estate by the attachment.

The 14th section of ch. 184 of the Revised Statutes of N. H. does not alter the mode of making an attachment of machinery, &c., but only provides a new method of preserving an attachment.

Where an officer returned that he had attached certain machinery "by leaving a copy" of his writ and return with

the town clerk, &c., and it appeared that he did nothing to make an attachment except to leave such copy: Held that no attachment had been made.

Carr *v.* Griffin.

Hillsboro' County, June Term, 1863.

Where the plaintiff proved the signature of the defendant to a deposition taken upon insufficient notice, and it did not appear that the defendant testified under any compulsion, or that his answers were made under duress or obtained by fraud: Held that the deposition was properly received to show the admission of the defendant.

Smith *v.* Boynton.

Belknap County, June Term, 1863.

In this State it is within the discretion of the court to limit the costs of the prevailing party or to refuse to allow any costs to him, except in cases where the statutes have expressly provided otherwise.

Boston and Maine Railroad *v.* Cilley.

Rockingham County, June Term, 1863.

A statute, giving to land owners a right of appeal from decisions of selectmen laying out highways, will not be construed as applicable to proceedings pending at the time of its passage, unless such intent of the Legislature is clearly manifested.

Hinds *v.* Ballou.

Grafton County, July Term, 1863.

Where H. received a deed of certain land, and at the same time and as part of the same transaction reconveyed the land in mortgage to his grantor: Held that the wife of H. was not entitled to dower as against such mortgage.

Where one having a right of redemption redeems the mortgaged premises by the payment of money, the transaction

will be treated as an assigment of the mortgage, if this is manifestly for the interest of the party so redeeming, and is not inconsistent with the justice of the case, where no contrary intent is expressed or necessarily implied.

The quit-claim deed of a mortgagee in possession is sufficient to transfer his interest under the mortgage.

Where L. having acquired the right of H., the mortgagor, redeemed the land with his own money, and then conveyed it for a valuable consideration by deed of quit claim to B.: Held that the widow of H. was not entitled to dower as against B. until she had offered to contribute her reasonable proportion of the money paid by L. to redeem the mortgaged premises.

BROWN *v.* HEATH, PR. AND CLARKVILLE, TR.

Coos County, July Term, 1863.

Where a town voted to pay $100 to each man who had enlisted, or who might enlist as a volunteer under the call of the President of the United States for six hundred thonsand men, and instructed the selectmen to pay the same at the time of his being mustered into the service: Held that the town was not liable in foreign attachment as the trustee of one H. who had enlisted before, but had been mustered in after the passage of such vote.

STATE *v.* FITTS, ET AL.

Grafton County, July Term, 1863.

An indictment, charging the selectmen of a town with wilful neglect "to raise and apply" money for the relief of the families of certain soldiers, under ch. 2584 of the pamphlet laws, is insufficient, if it neither shows that a sufficient amount of money for the purpose was not raised by the town, nor avers that there was no committee to apply it, legally constituted in the town.

LOVERIN *v.* WALKER, ET AL.

Hillsborough County, June, 1863.

Where the plaintiff owning a mill-seat and the land and mills on each side of the stream, conveyed an undivided half of the

land and mills on one side to the defendant Walker, and afterwards conveyed the other half of that land describing it, to another, "with one undivided half of the buildings thereon, with a privilege to draw the water from said saw-mill pond, sufficient for one tub-wheel at all seasons of the year:" Held that the grantee in the last mentioned deed took only an undivided half of the specified quantity of water—and also held that the quantity must be governed by the amount required to propel the tub-wheel before used to run the mill, although at the time of the conveyance the wheel had been carried away by a freshet and not then resorted.

CORSON *v.* CORSON.

Strafford County, August, 1863.

In a libel for a divorce the husband is not a competent witness to prove non-access.

BROWN *v.* ROLLINS.

Merrimack County, June, 1863.

The time of the debtor's absence in California, which continued without interruption for many years, is to be excluded in the computation of the time limited for the commencement of personal actions; although his wife and child continued to reside on his homestead farm in this State.

STATE *v.* NORTHUMBERLAND.

Coos County, July, 1863.

Whether there would be such access to a bridge over a river by public highways as to make it of public utility, and therefore subject the town to indictment for not building it is a question of fact for the jury; and where the highway upon one side terminated at the distance of eighty rods from the river without any dwelling houses or other buildings upon it, although the land through which such highway passed was cultivated, and part of a farm upon the other side of the river: Held that the court could not say that the want of such bridge would or would not be a nuisance.

The right of necessity to pass upon the adjoining land when a public way is suddenly obstructed, is but temporary, and gives the public no permanent easement in such adjoining land.

Hayes *v.* Waldron.

Strafford County, June, 1863.

Whether the use of a stream to carry off the manufacturer's waste is reasonable or not, is a question of fact for the jury, depending upon the circumstances of the particular case; such as the size and character of the stream, and for what purposes it is used; the extent of the pollution; the benefit to the manufacturer, and the injury to other riparian owners.

In determining the reasonableness of such use, evidence of usage in the deposit of similar waste is not admissible.

Marshall *v.* Russell.

Hillsboro' County, June Term, 1863.

A note dated on Sunday, but in fact made and delivered on another day of the week, is not void under the provisions of section 1, of ch. 118, of the Revised States of N. H.

Where the declaration correctly sets out the date of a note, no variance is created by proof that the note was in fact made on a day different from its date.

Walker *v.* Prescott.

Ale is not spirituous liquor within the meaning of ch. 846 of the laws of N. H.

Wallace *v.* Antrim Shovel Company.

Belknap County, March, 1863.

In a contract for services in buying stock and selling goods to be paid for by a commission on the sales, it was stipulated that in case of the violation by either party of any of his agree-

ments, the other party at his election, should from the date of such violation be entirely free from all obligations on his part. In an action to recover commissions on sales made for defendants: Held that the failure to perform some stipulation of the plaintiff, was not a valid defence, unless such stipulation was in the nature of a condition precedent, or the defendant had seasonably rescinded the contract on account of such failure.

Where the stipulation which the plaintiff fails to perform is but part of the consideration for the defendant's agreement, and is of such a nature that it may be compensated in damages, it will be regarded as independent, and not as a condition precedent.

Crawford *v.* Crawford, and Tr.

Coos County, March, 1863.

Where there is a substantial defect in the service of a writ, which is apparent on the record, the court on motion, if seasonably made, will generally quash the writ, and not put the defendant to his plea in abatement.

As a general rule the motion will not be regarded as seasonable unless made within the time limited for filing pleas in abatement.

Sanderson *v.* Nashua.

Hillsboro' County, June, 1863.

Where after a view by the jury of the place in question, the jury returned to it in the absence of one of the parties, and had their attention directed to various objects by the other, and afterwards upon learning the fact the absent party waived all objections to such second view upon certain instructions being given: Held, this afforded no cause for disturbing the verdict unless something was done of which the plaintiff had no notice at the time of such waiver, and which did not fairly come within the scope of the notice he did receive; or unless it was something more than the impropriety of having the view in the absence of the other party.

Where the opinion of an expert is given in evidence, he may be contradicted by showing that at another time he had expressed a different opinion.

Eastman *v.* Keasor.

Belknap County, June, 1863.

In a suit for malicious prosecution, it is competent, for the purpose of rebutting malice and to show probable cause, to prove that the defendant acted upon the advice of counsel, having in good faith fully laid the case before him.

Where the suit was for maliciously prosecuting the plaintiff for selling a wagon without defendant's consent, which wagon, with a harness, had been mortgaged to him by plaintiff: Held that to rebut malice and show probable cause, it was competent to prove, that before the prosecution the defendant had learned that plaintiff had secreted the harness.

Smith *v.* Jefts.

Hillsboro' County, August, 1863.

In an action for breach of covenant against incumbrances, the plaintiff is entitled to recover at least nominal damages; although the mortgage which existed at the time of the conveyance, was discharged by the covenantor before the action was commenced.

Samuel P. Treadwell *v.* James C. Brown and Edmund M. Brown.

Rockingham County, March, 1863.

Where a creditor has exhausted his remedy at law, he may maintain a bill in equity against the debtor, for discovery of assets, and for relief; although he may not have acquired a legal lien upon such assets, and he may do so without a previous demand upon such debtor.

Such a proceeding may be sustained independent of any statute provision.

Under the prayer for general relief, the plaintiff may have such relief as he is entitled to without regard to any defect in the prayer for special relief.

A demurrer to the whole of the discovery sought, will be overruled if the plaintiff be entitled to any part.

THOMAS SHANNON *v.* MARY J. CANNY.

Carroll County, June, 1863.

A married woman is not bound by a promissory note given during coverture, although at the time of her marriage she had by inheritance both real and personal estate, unless it be shown that such estate was held to her sole and separate use, and that the promise was made in respect to that estate.

THAYER *v.* STEVENS.

Hillsboro' County, June, 1863.

A new trial on petition will not be granted, because there is reason to believe that the jury misunderstood the instructions and mistook the rule of damages, unless due diligence has been used to correct the mistake; and a failure to ask for more specific instructions, or to move that the jury be directed to revise their assesment of damages, or to take other measures for relief on the coming in of the verdict, will be deemed to be such negligence as to prevent the grant of a new trial on petition; unless the omission is accounted for on the ground of some accident, mistake or misfortune.

CLARK *v.* CONGREGATIONAL SOCIETY IN KEENE.

Cheshire County, March, 1862.

Where issues are awarded in a suit in equity, after proofs are taken, the court may in its discretion direct, that on the trial of those issues, the depositions already taken may be read unless the attendance of the witnesses is actually procured—and also that such further evidence may be adduced, including the testimony of the parties, as, by law, would be competent on the trial of such issues.

SMITH AND WIFE *v.* BOSTON AND MAINE RAILROAD.

Strafford County, December, 1862.

The ticket of a passenger includes also the ordinary baggage

required for his personal accommodation upon his journey; but does not include merchandise.

Therefore a comman carrier of passengers is not an insurer of such merchandise when taken along by the passenger, unless a reward be given for its transportation, or it be of a character which by usage or contract is to be regarded as part of the baggage.

The fact that other passengers, on other occasions, had taken along with them in the passenger cars similar bundles of merchandise, without objection, has no legal tendency to prove that bundle in question was transported at the risk of the carrier, unless it were shown that such bundles were knowingly carried as part of the baggage, and paid for by the passenger ticket.

Although the carrier in such case is not liable as an insurer, he is liable as a bailee without reward for loss or injury caused by his gross negligence; but such negligence must be proved, and is not to be presumed from the mere fact of the loss.

In a suit by husband and wife for the loss of merchandise of the wife before marriage, she is not a competent witness for the plaintiffs; nor is her competency affected by the statute which removes the objection of interest.

Welsh *v.* Cutler.

Rockingham County, March, 1863.

Money won at play cannot be recovered back by the loser, because the parties are *in pari delicto*.

Brown *v.* Simons, et al.

Hillsboro' County, December, 1862.

Where the mortgagor's assignee offered to pay the mortgage debt, at the same time producing the money in a pocket book, a part of which was in bank notes, and the holder of the mortgage refused to receive it, without making any objection to the amonnt, or kind of money: Held that further proceedings were dispensed with, and that the tender was valid.

A mortgagee in possession and taking the rents and profits, can acquire no title against the mortgagor or his assignee, by a purchase of the land at a collector's sale for the taxes upon it;

but he may add the sum paid for such taxes to the mortgage debt as expenses necessarily incurred in protecting the estate.

Where the mortgagor sells a portion of the land in different parcels, and at different times, that which he retains will in equity be held primarily liable for the whole debt; and if not sufficient, the several parcels sold will be liable in the inverse order of such sales, beginning with the parcel last sold,—

Provided, however, that the previous conveyances not registered, are subject to be postponed, to subsequent registered conveyances.

The release by the mortgagee of a portion of the land mortgaged, with the knowledge of a prior sale of another portion, will operate as to such prior purchaser as a discharge *pro tanto*, of the mortgage debt.

Harvey *v.* Coffin.

Rockingham County, June, 1863.

Where defendant in consideration of an outfit furnished by plaintiff agreed to attach himself to a certain company and remain with it, and devote his time and services to obtaining money, for two years, subject to the rules, regulations and constitution of the company, and leave in the hands of the company for the plaintiff, one half of his net earnings; and at the end of about four months the company, by a vote of a majority of its members, and without any fault of the defendant, and against his consent, was dissolved:

Held that there was no undertaking by the defendant that the company should continue to exist during the two years, but that the agreement contemplated that the conduct of the enterprise, including its termination, should be wholly confided to the company.

Bank *v.* Davis, et al, and Trustee.

Rockingham County, June, 1863.

Where the members of a firm, describing themselves as partners, although signing their individual names, made an assignment of all their property of every description to be divided among all the creditors of the assignors, naming them separately: Held that the joint property alone was assigned,

and therefore the assignment was not valid under our statute; and that the assent of creditors could not be presumed.

An assignment not in accordance with the provisions of the statute is, nevertheless, valid if assented to by all the creditors.

HILL, ET AL. *v.* ROCKINGHAM BANK, ET AL.

Rockingham County, August, 1863.

A bill in equity will lie to compel the delivery of certificates of stock to one who has already the equitable title to such stock.

So it will lie to enforce the payment of a legacy, although no decree has been made by the Probate Court.

CHARLES C. SMITH *v.* JOSEPH MACE, JR. ET AL.

Rockingham County, June, 1863.

Where a vendor fradulently altered a promissory note, given for the price of the property sold: Held that he could not resort to the original consideration, whether the note was received strictly as payment or not.

Supreme Judicial Court of Massachusetts.

JAMES PEABODY & another *v.* CHARLES F. FLINT & others.[1]

A minority of the stockholders of a corporation may maintain a bill in equity in behalf of themselves and the other stockholders, for conspiracy and fraud, whereby their interests have been sacrificed, against the corporation and its officers and others who participate therein. By unreasonable delay, however, in bringing their bill, they will forfeit their title to equitable relief.

Bill in equity, brought March 9, 1860, by two stockholders of the Salem and Lowell Railroad Company, for themselves and in behalf of the other stockholders, against certain directors and agents of said company, and of the Lowell and Lawrence Railroad Company, whose railroad connected with that of the former company, and others, charging various acts of conspiracy and fraud, by which the interests of the stockholders in the Salem and Lowell Railroad Company were prejudiced and sacrificed, for the benefit of the Lowell and Lawrence Railroad Company; and especially in reference to false and fraudulent representations and practices for the purpose of injuring

[1] From Charles Allen, Esq., Reporter, to appear in Vol. VI. of his reports.

the credit of the Salem and Lowell Railroad, and enabling them to issue and take its bonds, on the 20th of August 1856, secured by a mortgage of property of the company, at prices below their true value, and also in reference to a contract executed on the 1st of October 1858, by which the Lowell and Lawrence Railroad Company were to "do and perform all the transportation of persons and freight upon and over the Salem and Lowell Railroad," and to pretended settlements made between said companies. The bill also set forth that, since the plaintiffs had reason to suspect the frauds and conspiracies charged, they have demanded explanations of the defendants, petitioned the general court for an investigation, and endeavored to procure the election of directors who would cause the matters to be investigated, but, being in a minority, have failed to succeed. The defendants filed a general demurrer. The plaintiffs, at the argument, moved to amend their bill by joining the Salem and Lowell Railroad Company as defendants.

This case was argued in January 1862.

J. G. Abbott & *T. Wentworth*, for the defendants. This bill cannot be sustained by stockholders against the officers of the corporation. There is no direct injury to the stockholders. The interest of stockholders in the property of a corporation is derivative and indirect. They have no property in or title to any of the assets of the company. They cannot interfere with or affect them by any conveyance or act of their own. Their whole interest is regulated by statute law, and they can in no way sue for a wrong done to the property. The whole management of the affairs of corporations is carefully regulated by statute; the manner of voting is provided for; and every stockholder knows beforehand that he may be at the mercy of other stockholders. *Smith* v. *Hurd*, 12 Met. 371. *Abbott* v. *Merriam*, 8 Cush. 588. *Denny* v. *Manhattan Co.* 2 Denio, 115. The only possible remedy would be to bring a bill asking for an order to compel the corporation and its officers to bring an action in favor of the corporation. But before this could be done, the corporation must have fraudulently refused, upon request, to bring such action; which is not averred here. *Smith* v. *Poor*, 40 Maine, 415. *Hersey* v. *Veazie*, 24 Maine, 9.

S. H. Phillips & *J. A. Gillis*, (*W. P. Webster* with them,) for the plaintiffs. The bill is brought by proper parties. Story Eq. Pl. §§ 94, 107, 109. *Crease* v. *Babcock*, 10 Met. 525. *Heath* v. *Ellis*, 12 Cush. 601, 604. *West* v. *Randall*, 2 Mason, 181, 193. *Robinson* v. *Smith*, 3 Paige, 222, 233.

Mann v. *Butler*, 2 Barb. Ch. 262. *Wood* v. *Draper*, 24 Barb. 187. *March* v. *Eastern Railroad*, 40 N. H. 548. *Dodge* v. *Woolsey*, 18 How. (U. S.) 331. *Good* v. *Blewitt*, 13 Ves. 397. *Cockburn* v. *Thompson*, 16 Ves. 321, 327. *Colman* v. *Eastern Counties Railway*, 10 Beav. 1. The bill discloses a case for equitable relief. *Salomons* v. *Laing*, 6 Railw. & Canal Cas. 303. *Bagshawe* v. *Eastern Union Railway*, Ib. 152. *Hodges* v. *New England Screw Co.* 1 R. I. 312. *Kean* v. *Johnson*, 1 Stockton, (N. J.) 401. *Gray* v. *Chaplin*, 2 Sim. & Stu. 267.

Chapman J. The bill sets forth a very complicated case. A full consideration of the charges of fraud which it contains, would involve the necessity of examining the various legislative acts which it recites, and the contracts and dealings which it sets forth. But such a discussion is unnecessary.

The principal ground of demurrer relied on by the defendants is, that the plaintiffs have not, and never had, any remedy for such injuries as they complain of; that, conceding the truth of the allegations that the directors of the Salem and Lowell Railroad Company, either by themselves or with the consent and connivance of a majority of their stockholders, combined, either among themselves, or with the Lowell and Lawrence Railroad Company or its directors, or with any of the other defendants, to defraud a minority of the stockholders of the Salem and Lowell Railroad Company, and in pursuance of this combination did the acts alleged, and so dealt and managed as to destroy the value of the stock as set forth, yet the only relief which the minority can have is the very imperfect one of selling out their stock for what it will bring in market. This doctrine is said to result from the nature of corporate property, which, being owned absolutely by the corporation, is under the absolute control of a majority of the stockholders, and of such directors as they choose to elect. Their decisions and acts, it is said, are final, and the minority are bound to submit to them.

But this doctrine, if correct, would place the property of stockholders in a corporation in a perilous condition. For it would enable the managers of one corporation to get the control of another by the purchase of a majority of its stock for the purpose, and then manage its affairs in such subservience to the interests of their own corporation, as to render the stock of the minority worthless, and avail themselves of its value without compensation. The demurrer concedes, for the purposes of this discussion, that the managers of the Lowell and Lawrence Railroad Company have thus acted in respect to the minority of

stockholders in the Salem and Lowell Railroad Company. It requires no great sagacity to see how similar frauds may be practised in behalf of many other railroads against connecting or rival roads, so that a system of railroad connections may become a system of frauds. If it may be practised with impunity between railroad corporations, it may also be practised between manufacturing corporations, and a managing majority may, at their pleasure, sacrifice the interests of the minority for the benefit of another corporation owned by them. The same remark is true in respect to several other classes of business corporations. The question thus presented is of great importance, because there is no known practicable method of establishing and managing railroads except by means of corporations; and many other great enterprises and branches of business, which require for their successful prosecution a large and permanent investment of capital, are also usually and most conveniently established and managed by means of corporate organizations.

This doctrine is also said to result from the nature of corporations and corporate property, as stated in *Smith* v. *Hurd*, 12 Met. 371. The views taken in that case are unquestionably correct; and they apply with especial force to that class of corporations whose stockholders have little more power than to elect officers, who, when elected, are invested by law with the sole and exclusive power of managing the concerns and business of the corporation. The corporation itself is regarded as a distinct person; and its property is legally vested in itself, and not in its stockholders. As individuals, they cannot, even by joining together unanimously, convey a title to it, or maintain an action at law for its possession, or for damages done to it. Nor can they make a contract that shall bind it, or enforce by action a contract that has been made with it. The artificial person called the corporation must manage its affairs in its own name, as exclusively as a natural person manages his property and business. The officers, though chosen by vote of the stockholders, are not their agents, but the agents of the corporation; and they are accountable to it alone. Therefore one or more of the stockholders cannot maintain an action at law against the officers for any breach of official duty that injures the corporate property as a whole. An injury done by the directors of a company to an individual by inducing him to become a member of the company by means of false representations is actionable, because it is an injury to him and not to the company. *Gerhard* v. *Bates*, 2 El. & Bl. 476. But the interest of stockholders

is, as stated in *Smith* v. *Hurd*, cited above, merely a qualified and equitable interest.

But if there is an equitable interest, there must result from it equitable relations and equitable rights; and these rights may be enforced by equitable remedies. As between the corporation itself and its officers, it was long since held that they were trustees, and that a court of equity would hold them responsible for every breach of trust. *Charitable Corporation* v. *Sutton*, 2 Atk. 400. The corporation itself holds its property as trustee for the stockholders, who have a joint interest in all its property and effects, and each of whom is related to it as *cestui que trust*. The corporation may call its officers to account if they wilfully abuse their trust, or misapply the funds of the company; and if it refuses to sue, or is still under the control of those who must be made defendants in the suit, the stockholders who are the real parties in interest may file a bill in their own names, making the corporation a party defendant; or a part of them may file a bill in behalf of themselves and all others standing in the same relation, if convenience requires it. *Robinson* v. *Smith*, 3 Paige, 222, and cases there cited. See also other authorities cited for the plaintiff on this point; and *Hersey* v. *Veazie*, 24 Maine, 9, and *Smith* v. *Poor*, 40 Maine, 415, cited by the defendants.

If other parties have participated with the officers in such proceedings, they may, according to the established principles of equity pleading, be joined as parties. In the discovery of frauds, and in furnishing remedies to parties defrauded, equity does not suffer technicalities to stand in its way, but seizes upon the substance of the case, and holds all parties to their just responsibility, following trust property into the hands of remote grantees and purchasers who have taken it with notice of a trust, in order to subject it to the trust. The objection, therefore, that a court of equity has no power to furnish a remedy in a case of this character, is untenable.

But there is another objection to the bill which must prevail. Equity regards diligence as one of its important elements; and it discountenances laches as inequitable; and unreasonable delay to prosecute an existing claim is a bar to a bill in equity, especially when the parties cannot be restored to their original position, and injustice may be done. *Veazie* v. *Williams*, 3 Story R. 610. *Tash* v. *Adams*, 10 Cush. 252. *Fuller* v. *Melrose*, 1 Allen, 166. Story on Eq. § 1520 and note 3.

In this case there has been unreasonable delay. The bill was sworn to March 9, 1860. The mortgage complained of was

executed August 20, 1856, and the lease to the Boston and Lowell Railroad Company, October 1, 1858. The contracts and dealings to be investigated and readjusted commenced in 1850, and continued till the execution of the mortgage, and even to the execution of the lease in 1858. Every day's delay increased the complication and the difficulty of making an equitable adjustment of them. In the mean time, the stock in the corporation must have been frequently changing hands, and there are no means of adjusting the equities growing out of such changes. A similar remark is applicable to the holders of the bonds secured by the mortgage. The nature of the case required the utmost diligence, in order to prevent injustice. Yet the plaintiffs delayed more than three years and a half after the making of the mortgage, and until after they had sought aid from the legislature. It does not appear that they had not at that time sufficient knowledge of the facts to enable them to prosecute, or that they have since gained any important information; and a decree such as they now seek may injuriously affect many persons who have become stockholders or bondholders during the period of this delay. For this reason the demurrer is sustained, and the bill dismissed.

Notices of New Books.

THE WORKS OF WILLIAM SHAKESPEARE. Edited by WILLIAM GEORGE CLARK, M. A. Fellow and Tutor of Trinity College, and Public Orator in the University of Cambridge; and JOHN GLOVER, M. A. Librarian of Trinity College, Cambridge. Vol. I. Cambridge and London: Macmillan and Co. 1863. 8vo. pp. xliv.—464.

The eighth part of Mr. Bohn's new edition of Lowndes's *Bibliographer's Manual*, contains a full and accurate account of Shakesperian literature. Mr. Bohn enumerates two hundred and sixty-two different editions of Shakespeare. The editors state distinctly in their preface the main rules by which they were governed in preparing this edition. An edition on this plan has been for several years in contemplation, and has been the subject of much discussion. That such an edition was wanted seemed to be generally allowed, and it was thought that Cambridge afforded facilities for the execution of the task such as few

other places could boast of. The Shakesperian collection given by Capell to the Library of Trinity College supplied a mass of material almost unrivalled in amount and value, and in some points unique. And well have the editors availed themselves of the rich stores at their command. The result of their labors is presented in an attractive form. Their edition contains many points of excellence superior to any other. The mechanical execution is faultless. It is to be completed in eight volumes. The second volume has been published.

PRINCIPLES OF POLITICAL ECONOMY, WITH SOME OF THEIR APPLICATIONS TO SOCIAL PHILOSOPHY. By JOHN STUART MILL. From the Fifth London Edition. New York: D. Appleton and Company. 1864. In Two Volumes. 8vo. Vol. I. pp. 616. Vol. II. pp. 603.

This author occupies the highest position among modern writers on Political Economy. "No existing treatise on Political Economy," he says, "contains the latest improvements which have been made in the theory of the subject. Many new ideas, and new applications of ideas, have been elicited by the discussions of the last few years, especially those on Currency, on Foreign Trade, and on the important topics connected more or less intimately with Colonization: and there seems reason that the field of Political Economy should be resurveyed in its whole extent, if only for the purpose of incorporating the results of these speculations, and bringing them into harmony with the principles previously laid down by the best thinkers on the subject. . . . . Political Economy, properly so called, has grown up almost from infancy since the time of Adam Smith; and the philosophy of society, from which practically that eminent thinker never separated his own peculiar theme, though still in very early stage of its progress, has advanced many steps beyond the point at which he left it. No attempt, however, has yet been made to combine his practical mode of teaching his subject with the increased knowledge since acquired of its theory, or to exhibit the economical phenomena of society in the relation in which they stand to the best social ideas of the present time, as he did, with such admirable success, in reference to the philosophy of his country. Such is the idea which the writer of the present work has kept before him."

In *Hilton* v. *Eckersley*, 24 Law Journal, Q. B. N. S. 352, the sole point was one purely of political economy, arising out of the Combination Laws. Some Lancashire mill-owners entered into a counter-combination against their men (who had combined to force their masters to yield to certain terms), not to open their mills for twelve months, except on terms agreed to by the majority of such mill-owners. Whether this agreement of the masters was valid, was the subject of elaborate discussions in the Court of Queen's Bench, and the Court of Error, which might have been imagined the two Houses of Parliament! "I enter on such considerations," said Lord Campbell in delivering his judgment, "with much reluctance and apprehension, when I

think how different generations of judges, and different judges of the same generation, have differed in opinion on questions of Political Economy, and other topics connected with the adjudication of such cases." The Court, Erle J. dissenting, held the agreement void, as contrary to public policy, in restraint of trade, and the free action of individuals; and the judgment was confirmed unanimously by a Court of Error, 25 Law Journal, Q. B. 199. Compare this decision, says a very recent writer, and the enlightened principles on which the discussion was conducted, with the state of things existing formerly, in the Legislature and on the Bench, as evidenced by the following passage in Lord Coke's Third Institute. Speaking of such "new manufacture as deserves a privilege," he proceeds: There was a new invention found out heretofore, that bonnets and caps might be thickened in a fulling-mill, by which means more might be thickened and fulled in one day, than by the labors of fourscore men, who got their livings by it: It was ordained, *that bonnets and caps should be thickened and fulled by the strength of men, and not in a fulling-mill: for it was holden inconvenient to turn so many laboring men to idleness.*"

These volumes are beautifully printed on paper slightly tinted. The imprimateur of the Messrs. Appleton is a sure guaranty that the mechanical execution is of the very highest order.

AN ANALYTICAL DIGEST OF THE LAWS OF THE UNITED STATES, FROM THE COMMENCEMENT OF THE THIRTY-FIFTH TO THE END OF THE THIRTY-SEVENTH CONGRESS. 1857–1863. Completing Brightly's United States Digest to the Present Time. By FREDERICK C. BRIGHTLY, Esq. Philadelphia: Kay & Brother, 1863. Royal 8vo.

This volume is admirably digested and annotated. Mr. Brightly has ably performed his editorial task. As a book for daily practical reference it is worthy a place in the library of every lawyer, and we may add of every citizen. It contains a large number of most important Congressional enactments: the Conscription Act, Internal Revenue Act, National Banking Act, etc. etc. These are accompanied with notes and references of great practical value. A well arranged Index with a Table of Cases Cited afford ample facility for reference.

Intelligence and Miscellany.

At the Palmer trial the ability of Sir Alexander Cockburn is said to have evoked expressions of admiration even from the criminal himself. After the Attorney-General had finished, Palmer beckoned to his legal adviser and said in a whisper, "An admirable speech!" The lawyer nodded acquiescence. "It is damaging to us," continued Palmer. "Dreadfully!" was the reply. "Well,

no matter," said Palmer, "that does not detract from the merits of the speech!"

A recent ludicrous attempt was made to fabricate a consideration in the case of *White, Executor* v. *Bluett*, 23 L. J. N. S. 36 Exch. A father held the promissory note of his son, who had teased him with complaints of not having received so much money, or so many advantages, from his father, as his other children, as, it was alleged, the father had admitted: and that he had agreed, that if his son would cease forever to make such complaints, he should be absolved from the payment of the note. The father died; and his executor, finding the note among the testator's papers, sued the son upon it at law; and he pleaded the facts as an answer to the action. The plea was demurred to, as showing no consideration; and the son's counsel endeavored to support his case, by alleging that he had a right to make the complaints alleged, and had subjected himself to a *detriment*, by not being able to continue his well-founded complaints! The court contemptuously dismissed the plea. Lord Wensleydale, then Mr. Baron Parke, sarcastically asked, "Is an agreement by a father in consideration that his son will not *bore* him, a binding contract?" "By the argument," said the Lord Chief Baron, "a principle is pressed to an absurdity, as a bubble is blown till it bursts . . . . Looking at the words merely, there is some foundation for the argument,—and following the words only, the conclusion may be arrived at. In reality, there was no consideration whatever. The son had no right to complain, for the father might make what distribution of his property he liked—and his son's abstaining from doing what he had no right to do, can be no *consideration*."

The credit of a witness is generally supposed to be injured by his having before, whether recently, or even some years back, been guilty of, or charged with, some punishable offence. Dr. Johnson relates of Shakespeare, that "he had by a misfortune, common enough to young fellows, fallen into ill-company; and, amongst them, some that made a frequent practice of deer stealing, engaged him, more than once, in robbing a park, that belonged to Sir Thomas Lacy of Charlecote, near Stratford." If Shakespeare had been called as a witness, bearing "his blushing honors thick upon him," would not his contemporaries have believed him?

The following document was copied from the original record by a gentleman of this city, a member of the Suffolk Bar:—

"The declaration of John Eldridge Jun. of Yarmouth in the County of Barnstable. That he was on his Journey to Boston this afternoon a little time after Sunset as he was riding up what is call[d] Spring hill in Plimouth —several boys in a large hand sled viz[t]. Jonah Cotton, the son of Jonah Cotton Esq. Lemuel Fish, the son of Lemuel Fish, decease[d], & David Bacon, the son of Mr. David Bacon, all said boys are minors and all of Plimouth in said sled run against the Horse he road with great force and broak his right hind leg short off a little above the fetterlock—he thinks the side of the sled was about three feet and a half long, this Declarant

further says, As soon as he saw the said sled he endeavor[d] to get out of the way of it, but was not able. The said Horse was owned by Messrs. John and Nathan Smith, of Sandwich, to the truth of the above he hath hereunto set his hand at Plimouth February 25th 1791.

JOHN ELDRIDGE, JUN.

Commonwealth of Massachusetts.

(L.S.) To all to whom this Publick Instrument of Protest shall come know ye, that on the day of the date hereof Personally appear[d] Before me Ephraim Spooner Notary Publick for the P[o]rt of Plimouth, John Eldridge, Jun. and made Solemn Oath to the truth of the above declaration by him subscribed. Therefore, I the said Notary at the Special Instance and request & upon the oath of the declarant as well upon his own account, as upon the account of the owners of the said Horse do solemnly Protest against the said sled and the said Boys therein, by running against the said Horse as being the only ca[u]se of Breaking the said Horses Leg, and that it happened in manner & form as above s[d] and was not occasion[d] by any neglect of said Eldridge. In Testimony whereof I have hereunto Set my hand and affixed the Seal. No trial accustom[d] at Plimouth February 25th Anno Domini 1791.

EPHRAIM SPOONER.

Formerly persons claiming the benefit of clergy were obliged to read the first verse of Psalm li. (the *Miserere*), in a Latin M.S. psalter. Otway says, "he can't write his name, nor read his neck-verse." It was not always the verse mentioned. FOSBROKE'S *Antiquities*, vol. i. p. 487.

Sir Robert Filmer published an advertisement to the jurymen of England touching witches. In this he shows the difference between a Hebrew and an English witch, and proves that the devil is the principal, and the witch only an accessory before the fact. Now, an accessory cannot be convicted before the principal is tried or outlawed upon summons for non-appearance; that he could not be tried by his peers, who, if he could, would never convict him; and that, by the rules of common law, the devil could never be summoned nor outlawed, and therefore a witch could not be tried.

"*Descendere*, to descend or to spring of one's body; hereupon they which are born of us are called by the name of descendants, which with them that ascend make the right line, and the ascendants and descendants cannot marry together, wherefore if Adam were now living he could not marry a wife." FULBECKE'S *Study of the Law*, p. 203.

"I once took a trip with Penn to his colony of Pennsylvania. The laws there are contained in a small volume; and are so extremely good, that there has been no alteration wanted in any one of them, ever since Sir William made them. They have no lawyers. Every one is to tell his own case, or some friend for him; they have four persons, as judges, on the bench; and after the case has been fully laid down,

on both sides, all the four draw lots; and he on whom the lot falls decides the question." LORD PETERBOROUGH.

JUSTICES OF THE PEACE. The people anciently elected Conservators of the Peace. The Justices took their origin early temp. Edw. III. that they might suppress insurrections, if any should arise through the deposition of Edw. II.; but the appellation *Justice* did not supersede their first name, *Guardian of the peace*, till, according to some, the 18th, to others the 34th of Edw. III. At the first institution they were very few; only two and three in a county; by Statute 13 Ric. II. not above six. Rich. III. was the first who enabled them to take bail. They were distinguished in the sixteenth century by wearing an agate in a ring, as an appendage to their gold chains. They are described, too, as attired in velvet dresses, with a long train of servants. Their present respectability is modern. Shakspeare says, that they attested the most absurd stories with their signatures. Ray has, in his Proverbs, a Basket Justice, a Jyll Justice; a good forenoon Justice, as opprobrious terms; and George Withers says, that unless poor men carried capons to the Justices at Christmas they plagued them with warrants. FOSBROKE'S *Antiquities*, vol. i. p. 465, ed. 1843.

WITNESSES. Witnesses to character and in a great number to charters, are of Roman antiquity. In the eleventh and especially the twelfth century, the greatest number of charters were not attested by real signatures of the witnesses, but only authorized by their presence. Then many charters of donation were doubly subscribed or only attested, i. e. at two different times, when the act was made, and when possession was given. The nomination of witnesses, added to their signature, ascends to the seventh century, and descends in France to the thirteenth, and in England to the fourteenth inclusively. It was the custom in the Roman and barbarous nations, to pull the ears and cuff witnesses, in order to compel them to remember their evidence. IBID. p. 533.

INNS OF COURT take date with the reign of Henry III. From Fortescue and others it appears that the stewardships to peers were the desirable objects of their students; that they were mostly children of noblemen; that they kept servants; learned singing and music; practised dancing; on the working days studied the Law, upon holidays, Scripture, and out of the hours of service, Chronicles. They were in general merely schools for education. Of the dancing, even of Judges, and their Christmas and other sports, there are ample details in Dugdale, Nichols's Progresses, and other writers. IBID. p. 463.

Owing to a change of editorship, the gentleman who prepared the "Intelligence and Miscellany" for our October number, was not aware that we had Mr. Lawrence's letter to Mr. Westlake in type, and that it had been kindly furnished to us before the 18th of December, the date of Mr. Dana's communication to the *Boston Daily Advertiser*, on which our notice of the Prize Cases is based.

On page 16, fourth line from the bottom, *opposed* should be *exposed*.

INSOLVENTS IN MASSACHUSETTS.

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Judge.
A'hberg, Charles M. [11]	Boston,	October 16, 1863,	Isaac Ames.
Atkinson, John S.	Gloucester,	May 28, 1863,	George F. Choate.
Abbot, Frederick	North Reading,	July 29, 1863,	Wm. A. Richardson.
Bailey, John [22]	South Danvers,	April 16, 1862,	George F. Choate.
Batchelder, Charles [18]	Lawrence,	Sept. 12, 1861,	George F. Choate.
Batchelder, L. R. [6]	Lowell,	August 11, 1863,	Wm. A. Richardson.
Bateman, Lewis H.	Georgetown,	Sept. 3, 1861,	George F. Choate.
Berry, Charles	Lynn,	April 18, 1863,	George F. Choate.
Blanchard, Jona [23]	Haverhill,	May 11, 1863,	George F. Choate.
Blankinship, Ichabod N.	Marion,	Sept. 23, 1863,	William H. Wood.
Blankinship, John B.	Marion,	" 16, 1863,	William H. Wood.
Boardman, Charles C.	Gloucester,	June 13, 1861,	George F. Choate.
Breed, Moses S.	Lynn,	Sept. 6, 1861,	George F. Choate.
Brickett, Franklin	Haverhill,	May 18, 1863,	George F. Choate.
Bryant, Oliver	Lawrence,	June 4, 1861,	George F. Choate.
Bryant, William H.	Wenham,	July 27, 1863,	George F. Choate.
Burnham, Aaron, 2d	Essex,	July 2, 1862,	George F. Choate.
Burns, Margaret A.	Lawrence,	Sept. 11, 1861,	George F. Choate.
Barton, William C.	Salem,	August 10, 1863,	George F. Choate.
Carleton, Jona F.	Salem,	May 14, 1863,	George F. Choate.
Carter, George A.	Cambridge,	June 25, 1863,	Wm. A. Richardson.
Cate, Daniel F.	South Danvers,	April 3, 1863,	George F. Choate.
Caverly, Lot J.	Bradford,	Sept. 12, 1861,	George F. Choate.
Chamberlin, Richard H.	Salem,	July 5, 1861,	George F. Choate.
Claflin, William H.	West Roxbury,	October 3, 1863,	George White.
Clark, Daniel M. [11]	Boston,	October 16, 1863,	Isaac Ames.
Cressey, Thomas E. [16]	South Danvers,	June 12, 1861,	George F. Choate.
Daily, Daniel (1)	Fall River,	April 18, 1863,	Edmund H. Bennett.
Davidson, Leonard A. [7]	Lawrence,	Sept. 23, 1863,	George F. Choate.
Davis, Osgood B. [12]	Roxbury,	October 28, 1863,	Isaac Ames.
Dawson, Abel [7]	Lawrence,	Sept. 23, 1863,	George F. Choate.
Dillon, John [1]	Fall River,	April 18, 1863,	Edmund H. Bennett.
Dodge, Cyrus	Manchester,	June 17, 1861,	George F. Choate.
Dolan, Michael W.	Roxbury,	" 17, 1863,	George White.
English, David C. [19]	Lawrence,	Sept. 12, 1861,	George F. Choate.
Fairbanks, James B [17]	Newburyport,	" 7, 1861,	George F. Choate.
Farwell, Chandler [22]	South Danvers,	April 16, 1862,	George F. Choate.
Flint, Joseph P.	Methuen,	Sept. 5, 1861,	George F. Choate.
Foster, Ira [19]	South Danvers,	" 13, 1861,	George F. Choate.
Fowler, William W.	Lynn,	" 20, 1861,	George F. Choate.
French, Horace W. [8]	Boston,	" 3, 1863,	Isaac Ames.
Friend, Elbridge H.	Gloucester,	May 26, 1863,	George F. Choate.
Getchell, Joshua	Ipswich,	Sept. 24, 1861,	George F. Choate.
Gould, Charles W.	Boston,	" 15, 1863,	Isaac Ames.
Green, Samuel G.	Dorchester,	August 25, 1863,	George White.
Griswold, Benoni L.	Salem,	Sept. 23, 1861,	George F. Choate.
Hale, Alfred	Ipswich,	April 17, 1862,	George F. Choate.
Hale, James F. [16]	South Danvers,	June 12, 1861,	George F. Choate.
Hall, Alfred H. [4]	Boston,	August 17, 1863,	Isaac Ames.
Hall, Moses B. [18]	Lawrence,	Sept. 12, 1861,	George F. Choate.
Hewes, William H. [15]	Haverhill,	June 6, 1861,	George F. Choate.
Hildreth, Joseph H.	Townsend.	Sept. 18, 1863,	Wm. A. Richardson.
Howard, Elam	West Bridgewater,	July 10, 1863,	William H. Wood.
Howard, William S.	Boston,	Sept. 29, 1863,	Isaac Ames.
Howland, Jairus	Kingston,	August 3, 1863,	William H. Wood.
Hoyt, Thomas S. [9]	Boston,	Sept. 23, 1863,	Isaac Ames.
Hubon, Frederic [25]	Salem,	July 29, 1863,	George F. Choate.
James, Joseph	Medford,	Sept. 30, 1863,	Wm. A. Richardson.
Jeffries, Edward P.	Boston,	" 14, 1863,	Isaac Ames.
Jenkins, Robert	Beverly,	April 24, 1863,	George F. Choate.
Jordan, Edmund W.	West Roxbury,	July 31, 1863,	George White.
Kennedy, Thomas W.	Walpole,	August 21, 1863,	George White.
Kimball, Alfred [13]	Haverhill,	June 1, 1861,	George F. Choate.
Kimball, George W.	Woburn,	August 4, 1863,	Wm. A. Richardson.

INSOLVENTS IN MASSACHUSETTS—(Continued.)

Name of Insolvent.	Residence.	Commencement of Proceedings.	Name of Judge.
Kimball, Reuben	Roxbury,	July 22, 1863,	Isaac Ames.
Kimball, Warren [13]	Haverhill,	June 1, 1861,	George F. Choate.
Knutsford, William J. [21]	Rockport,	April 11, 1862,	George F. Choate.
Lancaster, George T. [24]	Haverhill,	May 28, 1863,	George F. Choate.
Lee, Israel S. [25]	Salem,	July 29, 1863,	George F. Choate.
Leland, Gorham A. [10]	Boston,	October 13, 1863,	Isaac Ames.
Leland, Thomas J. [10]	Somerville,	" 13, 1863,	Isaac Ames.
Leland, Thomas S. [10]	Boston,	" 13, 1863,	Isaac Ames.
Lewis, Francis W.	Lynn,	July 18, 1861,	George F. Choate.
Lucy, William	Bradford,	Sept. 12, 1861,	George F. Choate.
Martin, Daniel R.	Newburyport,	" 9, 1861,	George F. Choate.
Mathews, George H.	N. Bridgewater,	" 24, 1863,	William H. Wood.
McSheehy, John J.	Boston,	" 9, 1863,	Isaac Ames.
Merriam, Samuel B. [5]	Cambridge,	August 25, 1863,	Wm. A. Richardson.
Merrick, Theo. B.	Melrose,	Sept. 16, 1863,	Wm. A. Richardson.
Montgomery, John H.	South Danvers,	July 12, 1861,	George F. Choate.
Moulton, Daniel [14]	Haverhill,	June 4, 1861,	George F. Choate.
Needham, Otis H. [6]	Lowell,	August 11, 1863,	Wm. A. Richardson.
Newhall, L. P.	Lynn,	July 23, 1861,	George F. Choate.
Newhall, William H.	Saugus,	Sept. 6, 1861,	George F. Choate.
Noah, John G.	Salem,	August 13, 1863,	George F. Choate.
Nourse, John	Lynn,	May 27, 1863,	George F. Choate.
Oliver, John, Jr.	Boston,	Sept. 15, 1863,	Isaac Ames.
Palmer, Sion S.	New Bedford,	April 6, 1863,	Edmund H. Bennett.
Parker, Amos	Groveland,	Sept. 10, 1861,	George F. Choate.
Parkinson, Jemima	Lawrence,	" 10, 1861,	George F. Choate.
Parkinson, William	Lawrence,	" 10, 1861,	George F. Choate.
Parsons, Alfred [21]	Rockport,	April 11, 1862,	George F. Choate.
Paul, Andrew M. [17]	Newburyport,	Sept. 7, 1861,	George F. Choate.
Perkins, David G.	Topsfield,	May 20, 1863,	George F. Choate.
Perley, Frederick	Danvers,	Sept. 6, 1861,	George F. Choate.
Putnam, Daniel A.	Boston,	October 1, 1863,	Isaac Ames.
Quero, Andrew	Haverhill,	June 29, 1861,	George F. Choate.
Raddin, John M.	Saugus,	Sept. 13, 1861,	George F. Choate.
Rand, Leonard [23]	Haverhill,	May 11, 1863,	George F. Choate.
Ravel, Benjamin P.	Lynn,	April 10, 1862,	George F. Choate.
Rundlett, Charles H. [8]	Dorchester,	Sept. 3, 1863,	Isaac Ames.
Rundlett, Samuel H.	Newburyport,	April 4, 1862,	George F. Choate.
Salin, C. C. [12]	Boston,	October 28, 1863,	Isaac Ames.
Sawyer, Asa	South Danvers,	June 13, 1861,	George F. Choate.
Savary, Charles G. [20]	Groveland,	December 4, 1861,	George F. Choate.
Savary, Frank [20]	Groveland,	" 4, 1861,	George F. Choate.
Seaver, Samuel L.	Taunton,	July 21, 1863,	Edmund H. Bennett.
Shattuck, Amos	Woburn,	" 29, 1863,	Wm. A. Richardson.
Smith, George [3]	Boston,	August 14, 1863,	Isaac Ames.
Smith, George B. [9]	Boston,	Sept. 23, 1863,	Isaac Ames.
Smith, William [3]	Boston,	August 14, 1863,	Isaac Ames.
Spooner, Sanford B.	Fall River,	April 23, 1863,	Edmund H. Bennett.
Stafford, John S. [5]	Cambridge,	August 25, 1863,	Wm. A. Richardson.
Stiles, Moses O. [14]	Haverhill,	June 4, 1861,	George F. Choate.
Terry, Silas	Swanzey,	May 26, 1863,	Edmund H. Bennett.
Thomson, James [2]	Boston,	August 8, 1863,	Isaac Ames.
Viner, George [2]	Roxbury,	" 8, 1863,	Isaac Ames.
Waters, William D.	Salem,	April 16, 1862,	George F. Choate.
White, Abel	Haverhill,	June 24, 1863,	George F. Choate.
White, Sumner P.	Charlestown,	August 24, 1863,	Wm. A. Richardson.
Whitney, Marshall [4]	Roxbury,	" 17, 1863,	Isaac Ames.
Whittier, Warner R. [24]	Haverhill,	May 28, 1863,	George F. Choate.
Woodman, Bradstreet P. [24	Haverhill,	" 28, 1863,	George F. Choate.

PARTNERSHIPS.

[1] Dillon & Daily; [2] Thompson & Viner; [3] George & William Smith; [4] Whitney & Hall; [5] Stafford & Co.; [6] L. R. Batchelder & Co.; [7] L. A. Davidson & Co; [8] Charles H. Rundlett & Co.; [9] Hoyt, Smith & Co; [10] Thomas J. Leland & Co.; [11] Ahberg & Clark; [12] C. C. Salin & Co.; [13] A. & W. Kimball; [14] Stiles & Moulton; [15] W. H. Hewes & Co.; [16] Cressey & Hale; [17] Fairbanks & Paul; [18] Batchelder & Hall; [19] English & Foster; [20] Savory & Co.; [21] Parsons & Knutsford; [22] Bailey & Farwell; [23] J. Blanchard & Co.; [24] Woodman & Lancaster; [25] Hubon & Lee.